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OUR STATE CONSTITUTIONS

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OUR STATE CONSTITUTIONS.[1]

CHAPTER I.

General Tendencies in State Constitutions.

Throughout classical and medieval philosophizing runs a theory of a paramount or fundamental law, permanent in kind, because fixed in nature. This theory in its modern form, after voicing itself for a time in the Cromwellian period, came to the front in the American Revolution, and found its proper expression in the written constitution. In our federal system, owing to the rigidity of the national constitution, the development of that document must be traced in the varying decisions of the supreme court of the United States. In the commonwealths a more flexible system of amendment prevails, and for that reason changes in what the states consider to be their fundamental law, may be traced more easily in the constitutions themselves, subject as they are to frequent revision and amendment.

In the revolutionary period these constitutions were few in number, small in size, and contained a mere framework of governmental organization. Since that time some two hundred state constitutions have been made or revised. The forty-five now in force average in length over fifteen thousand words, the longest, that of Louisiana, having about forty-five thousand. In place of fundamentals only, they are filled with details, so petty in many instances, as hardly worthy even to be dignified as statutory.

This tendency to enlargement is not without justification. The proper solution of problems arising from the complexity of modern interests, demands more wisdom and knowledge than is usually found in legislatures, which are often incompetent and sometimes venal. The democratic demand for legislation through convention, is really a demand for legislators of a high grade. To legislatures in consequence are left the mere details of legislation with a minimum of discretion in the formulation of statutes.

[1]Read December 27, 1906, before the Third Annual Meeting of the American Political Science Association at Providence, R. I.

Their ability in this sort of thing is well seen in the biennial output by the states of nearly twenty thousand statutes, three-fifths of which are local, private, or special in kind.

Our present state constitutions represent different stages of development and may be divided into four sets: (1) the six New England constitutions, (2) the ten made during the twenty-five years ending with 1865, (3) the fourteen made from that date up to 1886, and (4) the fifteen new and revised constitutions of the last twenty years. Three more will likely be added to this number within the next twelve months,[2] and an average of one per year may be expected from that time on. The process of amendment, through which about twenty additions are made annually to our constitutions, tends to modernize all of these.

A comparison of these sets shows that the starting point for the study of state constitutions is the article on the lawmaking department. This powerful body in revolutionary days completely overshadowed the other two departments, and was practically the repository of the sovereign powers of the state. Though the theory of the separation of powers was held, all really important powers were in fact entrusted to the legislature. This is by no means the present condition. Not only have the other two departments been built up and strengthened at the expense of the assembly, but three other departments of government have developed into importance, and should be considered in any discussion of the division of sovereign powers. If the government is that organization through which all the sovereign powers of the state may be expressed, then surely in modern times we should speak not merely of the three historic departments of government, viz., the executive, the judicial, and the legislative, but also of the differentiations from these, the administration, the electorate, and that nameless agency, which in every state has the legal right to formulate the fundamental law, an agency which, for want of a better name, may be called the *Legal Sovereign*. These six departments unitedly may exercise every conceivable power included within the term sovereignty.

The general tendency in regard to these six departments of government, as shown by our existing constitutions, will be indicated in order, and then attention directed to the lengthy series of limita-

[2] Oklahoma, Michigan, and possibly Iowa.

tions placed on the exercise of other powers not removed from legislative discretion.

I. *Administration.*—Historically administration is of course part of the executive function, but in our revolutionary period it was at first controlled and in part carried on by the legislatures. This was done through committees, temporary and then permanent. The work performed by these was gradually transferred to paid officials, who, as functions became specialized, were organized, for the purpose of carrying on the work of administration, into the numerous boards, commissions, and departments of government. Most of our states are still in this stage of development. Every new line of activity results in the formation of a special board or department, the organization and powers of which are frequently defined in the constitution. This also regularly provides for the election by popular vote of the heads of the chief administrative departments, such as the secretaries of state and of the treasury, the comptroller, or auditor, and the superintendent of education. As these numerous boards and departments really perform the larger part of governmental business, it is surely advisable that the several articles and provisions of the constitution be gathered together and placed under a separate heading entitled, departments of administration. Their functions also should be coördinated, unified, and thoroughly supervised. The absence of such centralization is perhaps the greatest weakness in local administration. Supervisory control over such bodies by legislative committees tends to become merely nominal, with the inevitable consequences of inefficency and lack of economy. There is however a strong tendency to center such powers in the executive, making him the head of the administration as in the national system. This is done by bestowing on him large powers in appointment and removal, authority to demand reports, and to investigate the management of departments.

II. *The Executive.*—Aside from control over administration, the chief gain in power on the part of the executive is his veto over legislation. In 1788 two states only had placed the veto power in their constitutions, at this time but two states withhold it. Thirty-one states adopt the national fraction of two-thirds of both houses to override the veto, the other twelve prefer a majority or three-fifths. Thirty states now allow the governor to veto items of appropriation

bills, and three of these also allow him to veto part or parts of any bill. If adjourment intervenes between the sending of a bill to the governor and its return approved or vetoed, ten states allow the governor a period of from three to thirty days to decide whether or not to approve such bills. Eighteen states allow him to file objections with the secretary of state, thereby defeating the bill. The veto power, especially when strengthened by the power to veto items and to approve or disapprove after adjournment, has aided greatly in the enlargement of the importance of the executive and in the conservation of public interests.

The governor's term of office is four years in twenty-one states, two years in the same number, three in New Jersey and one year in Massachusetts and Rhode Island. The office of lieutenant-governor is still retained in thirty-two of the states. He presides over the senate in thirty of these. In Massachusetts and in Rhode Island, he is a member of the council, or of the senate, *ex-officio*, but presides only in the absence of the governor, who by constitution is presiding officer. The old-fashioned executive council is still retained by three of the New England states, and a modified form of it in North Carolina. Iowa by statute has an executive council made up of the governor and the heads of three departments.

III. *The Judiciary Department.*—The older constitutions disposed of this department in few words. Discretionary power was conferred on the legislature, and judges, appointed by governor or legislature, usually held a life tenure. The newer constitutions completely reverse this practice. The court, in the United States, does not simply decide cases, it interprets finally the constitution, and to that extent is a political factor. For this reason complex business conditions and the rise of corporate interests, necessitate much more attention to this department of government. The constitution of Louisiana, for instance, devotes about twelve thousand words to the courts of the state and of the city and parish of New Orleans. The newer constitutions regularly outline the grades of courts, define their powers, set the boundaries for judicial districts, and regulate the number and tenure of the judiciary. Three of the original states still retain a life tenure, but all others fix a term of years for judges of the supreme court; the term varies from two to twenty-one years. Twenty states favor the six-year term, eight and twelve years are the terms next favored,

three states have long terms, and Vermont a two-year tenure. Six states only retain appointment through the governor aided by council or senate. Four choose through the legislature, and one nominates through the governor and elects through the assembly. The other states all elect their judiciary and show no tendency in the other direction. Four of the New England states still allow the governor or assembly to ask the supreme court for opinions on questions of law,[3] South Dakota and Florida allow the governor this privilege, but all the other states with greater wisdom reject this provision. There is a marked tendency in the constitutions to merge law and equity into a common procedure, to modify the jury, to define libel, and to safeguard the exercise of eminent domain by quasi-public corporations. All these tendencies unitedly show a strong determination to make the judicial system responsible directly to the electorate.

IV. *The Constitutional Convention.*—The modern theory of a fundamental law, and its embodiment in the written constitution, have necessitated the development of a governmental agency for the express purpose of formulating the fundamental law. Two forms of this agency are in use among the states, the legislature and the convention.

(1) The legislature in the performance of this office is not properly a legislature, but a convention. This is shown by the fact that its recommendations are not sent to the governor for his approval or veto, but to the electorate for final decision. The older method of amendment was through the action of two assemblies and large fractional votes by assembly and electorate. At the present time action by one assembly is sufficient in twenty six states. Eighteen still require two assemblies, and the remaining state (New Hampshire) amends only in convention. All but Delaware use the referendum for final decision. Seventeen of the constitutions still require a two-thirds vote of both houses on amendments; seven, a three-fifths vote; in sixteen a majority is sufficient. Only two states require more than a majority for referenda, Rhode Island (three-fifths), and New Hampshire (two-thirds); the usual requirement, that of twenty-eight states, is "a majority of those voting thereon," but a few make amendment

[3]Massachusets, Maine, New Hampshire, Rhode Island.

well nigh impossible by requiring a majority of the electors, or a majority of those voting at a general election.

(2) Few seem to realize the importance of the constitutional convention in American state governments. It is the great agency through which democracy finds expression. In its latest form, that of a body made up of delegates elected from districts of equal population, it is one of the greatest of our political inventions. Through it popular rights may be secured in the constitution, legislative tyranny restrained, and powerful interests subordinated to the general welfare. Not that these objects have as yet been attained, but the agency is here through which an enlightened public opinion can express itself.

All but thirteen of the states expressly provide for the calling of a convention. In twelve of the thirteen, conventions can be called under legislative authority. In one state only (Rhode Island) is there doubt about the matter. Its supreme court in 1883, when requested by the senate for an opinion, in its reply concluded that under the state constitution a convention could not be called. Judge Jameson, however, in his great work, On Constitutional Conventions,[4] in discussing this opinion reaches the opposite conclusion. If the composition of the convention is mentioned at all in the constitution, the usual provision is that it be made up of representatives from districts of equal population. There are, however, a few exceptions. Since the year 1890, under the older theory that the convention is the repository of sovereign powers, five constitutions have been promulgated by conventions without referendum.[5] To check this possibility, fourteen constitutions expressly require the referendum, and the other states would likely do so by statute.

V. *The Electorate.*—If this body, instead of being referred to as the "sovereign people," should be treated, from the legal standpoint at any rate, as a governmental agency, clearness in discussion would be gained. Under the constitutions this governmental agency has three sets of powers: (1) the power of appointment to certain offices through elections; (2) the power to assist in lawmaking through the referendum and to some extent through the initiative, and (3) the power to assist in judicial decisions through

[4]Fourth ed., pp. 601–615.

[5]Mississippi, South Carolina, Delaware, Louisiana, Virginia.

service on jury. These powers are steadily increasing through the agency of the convention. The chief officials of the state and municipality, the lawmakers of all grades, and judges, supreme and inferior, are now regularly elected by popular vote. The verdicts of juries are now often made by a fraction of the whole, instead of by unanimous vote. The referendum is generally required for final decisions on fundamental law, and very largely on local and general statutes. The most remarkable development of this power may be found in the constitution of Oregon since its amendment in 1902. By this the power of initiative and referendum is fully secured to the electorate, both in statutory and constitutional provisions. These powers of the electorate are plainly specified in the constitutions and are clearly governmental in kind, as truly so as any other of the agencies of the state.

The usual basis for membership in the electorate is that they be male citizens of the United States at least twenty-one years of age. Nine states still allow aliens to vote who have declared their intentions to become citizens, four states grant suffrage to women, eight states have a slight educational qualification, six other states have an educational qualification as one of several alternatives, and three of these introduce a property qualification as an alternative, but otherwise, this historic restriction survives only in Rhode Island, in the election of members of city councils.

VI. *The Legislature or General Assembly.*—The revolutionary constitutions differed widely in respect to the organization and membership of their legislatures. Very noticeable, however, is the present tendency to approximate toward a common type. In all the states the legislature is bicameral. Thirty-eight states elect the members of the house biennially; senators have a four-year term in twenty-nine states, and twenty-four provide for a system of class rotation in the senate. A biennial session is required in thirty-eight states, and thirty-one fix actually or practically a time limit for legislative sessions; this in eighteen states is fixed at sixty days. The membership of the state legislatures is unitedly about seven thousand, but nearly two thousand of these are found in the seven[6] states that have assemblies of over two hundred members. The size of the membership in each house naturally varies with the population of the state, but if the seven mentioned

[6]Illinois, Georgia, Pennsylvania, Massachusetts, Vermont, Connecticut, New Hampshire.

above be omitted, the general average is a membership of about thirty-five in the senate and ninety in the house. The house membership is regularly from two to three times that of the senate.

In seventeen states the membership of both houses is made up of representatives from districts of equal population. In nineteen other states there is a requirement that a locality, either county or town, be represented in one or both houses. In these states, however, the requirement modifies only slightly the principle of popular representation, and the districts are practically of equal population. In other words thirty-six of the states make their legislative houses popular in basis. The nine other states depart from this principle by requiring a disproportionate representation for their rural towns, or countries of small population. The worst offenders in this respect are Delaware, Maryland, Vermont, Connecticut and Rhode Island.

Limitations on Legislatures.—Under the national constitution the powers not delegated to the federation nor prohibited to the states are reserved to the states. This reserved power may be exercised in each state by its legislature, unless the local constitution redelegates parts of this power to the other departments of government, and places restrictions and prohibitions on legislative use of the remainder.

One would think that since our legislators usually come from districts of equal population they would by constitution be entrusted with large discretionary powers in legislation. This, however, is far from being the fact. There is a steadily increasing tendency to restrict in every possible way the enormous powers of legislatures. In general the length of a constitution indicates the amount of restriction placed on lawmaking. Every provision in a Bill of Rights limits by so much legislative initiative. The rapidly increasing powers of the executive and the electorate in appointment, administration, and lawmaking are all at the expense of the assembly; the growth in importance of the constitutional convention subordinates proportionately its rival, the legislature. Every article in the constitution that fixes the organization and powers of a department of administration, or division of government, or defines a policy in regard to important interests, is to that extent a restriction on legislative discretion. Yet in the newer constitutions one may expect to find, as already indicated, lengthy

articles on the judicial and administrative departments, and moreover much regulation of taxation, finance, local government, education, elections and the suffrage; land, mines, corporate interests and labor. To these regulations should be added long lists of prohibitions such as those against special or local legislation, and numerous regulations of procedure in respect to the handling of bills. Subtract all these limitations on legislative powers from the totality, and the question may then well arise whether it will ultimately prove worth while to retain an expensive legislature to exercise its small residue of petty powers. A convention meeting periodically, and well supervised administrative departments with ordinance powers, might perform all legislative functions with entire satisfaction.

It seems plain that the really important lawmaking body at the present time is the convention. Its members are of a higher grade and turn out work distinctly superior to that of legislatures. These really are bodies having chiefly ordinance powers. Whenever, through sudden changes in conditions, a legislature unexpectedly develops large discretionary power in statute-making, the next convention in that state settles the principle itself and thereby adds another limitation to legislative initiative. If this tendency continues, the biennial session will become quadrennial, the term be limited to forty or sixty days, and every inducement offered our legislators to do as little and to adjourn as speedily as possible. On the other hand if our states can make improvements in the legislative system, and select a better grade of legislators, our lawmaking might continue to be entrusted to legislatures, whose members, as the early constitutions of Maryland and Vermont put it, should be persons "most wise, sensible, and discreet," and "most noted for wisdom and virtue."

In conclusion, attention may well be called to the practical disappearance from our constitutions of some old-time provisions. Among these may be mentioned the annual election, and the annual session, the governor's council, and unequal representation of the people in lawmaking bodies; the life tenure of judges, and the advisory capacity of the supreme court. Religious restrictions on office-holding, and the property qualification for suffrage, with very slight exceptions, have gone; the town system of New England is dying in that section and does not exist outside of it. The

real local units of administration now are, (1) the rural county with its numerous subdivisions, and (2) the incorporated city, both of which are gaining power throughout the United States.

If general tendencies in the making of constitutions may be condensed into a sentence, we may say that governmental powers are centering into the electorate, which voices itself through the ballot and the convention.

CHAPTER II.

The Making of Constitutions.

The Written Constitution.—The United States has made many a contribution to the theory and practice of modern politics. Among these by no means the least is the written constitution. Developed during the throes of the Revolution, one hundred and thirty years ago, it, and its agency the convention, have been the chief means through which democracy has made its demands and fixed them in the law of the land. A convention, democratically organized, voices the will of the people. This will, formulated into the fundamental law, is a guaranty of life and liberty, and a surety against governmental injustice and tyranny.

Thomas Jefferson, the apostle of American democracy, used to argue that the constitution of every state should be revised at least once every twenty years, so as to allow each generation to determine for itself its fundamental law. His argument is even more true since his day, for the conditions of life so rapidly change through advancing civilization, that modifications in fundamental law must be made at frequent intervals. These modifications, as Judge Jameson[1] puts it, are regularly made through a legislature and the referendum, when the purpose "is to bring about amendments which are few and simple, and independent;" but a new constitution or a revision of an existing constitution, demands the services of a convention, which "only is appropriate or permissible."

Our state constitutions, both past and present, so reflect the changing conditions and varied interests of our country, that a study of them affords a perfect mirror of American democracy. No one can arise from this study without a full conviction that our political institutions are established on firm foundations, and that we are slowly working out a mass of constitutional principles in harmony with morality and intelligence.

The earliest of our state constitutions are far inferior to those of later date. The statesmen of those days, though with the best of intentions, had not a full grasp of democratic principles, nor had

[1]On Constitutional Conventions, pp. 610–611, fourth edition.

they had much political experience in handling great governmental interests. Since their day over two hundred constitutions have been made in this country alone, and the conflicting experiences of our numerous states supply ample material for study. Consequently, it is entirely possible for a state, profiting by past experiences and present constitutions to prepare a fundamental law, which shall express the best American political ideals and practices. It is hoped that this series of papers may prove of some slight help at least, in promoting this possibility.

Constitution Making.—Historically our present state constitutions represent four distinct periods of political development. The first set[2] is composed of the constitutions of the six New England states. These are old-fashioned in type, are fundamentally based on the outgrown system of town government, and are so difficult of amendment that they retain many obsolete features, and therefore are no longer suitable as models for modern states. The best of these is the constitution of Massachusetts. The combination of ultra-conservative rural towns and a mass of immigrant population ignorant of our political institutions, affords little hope that these constitutions can be modernized without long agitation and considerable difficulty. The second set[3] consists of those constitutions made in the period embracing the twenty-five years before the ending of the Civil War. These ten constitutions are democratic in principle and excellent in tone, but do not include the experience of later years, except as some of these have crept in through amendment. The third set,[4] fourteen in number, represents in the main the changes necessitated by reconstruction in the South, and by economic changes North and South, as the result of the war. The last set, fifteen in number, consists of two groups, one made up of the seven[5] new mining and agricultural states of the Far West, and the others,[6] representing later read-

[2]Vermont, 1793; Massachusetts, 1780; New Hampshire, 1784; Connecticut, 1818; Maine 1819, and Rhode Island, 1842.

[3]New Jersey, 1842; Wisconsin, 1848; Michigan, 1850; Indiana and Ohio, 1851; Iowa, Oregon, Minnesota. 1857, Kansas, 1859; and Nevada, 1864.

[4]Maryland, 1867; Tennessee and Illinois, 1870; West Virginia, 1872; Pennsylvania, 1873; Arkansas, 1874; Texas, Missouri, North Carolina and Nebraska, 1875; Colorado, 1876; Georgia, 1877; California, 1879, and Florida, 1886.

[5]North Dakota, South Dakota, Montana, Idaho, Wyoming, Washington, in 1889; Utah, 1895.

[6]Mississippi, 1890; Kentucky, 1891; New York, 1894; South Carolina, 1895; Delaware, 1897; Louisiana, 1898; Alabama, 1901, and Virginia, 1902.

justments to changed economic conditions since the war, and in the South readjustment in the matter of negro suffrage.

Besides these constitutions there is an annually increasing mass of amendments added through legislature and referendum. In the decade from 1894–1904 three hundred and eighty-one amendments were voted on by the electorates of the several states, two hundred and seventeen of which were adopted and one hundred and sixty-four rejected. Evidently a knowledge of these amendments also is necessary, representing as they do the current contribution of politics toward the supposed defects and shortcomings of existing constitutions.

The length of recent constitutions is one reason for so large a number of amendments. The earliest constitutions seldom contained over five thousand words and averaged much less. Now, the shortest constitution (Rhode Island) contains about six thousand words, the average is about fifteen thousand and five hundred, and the three largest are codes in themselves.[7] This lengthening of constitutions is to some extent due to a failure on the part of constitution makers to distinguish between fundamental and statutory law, coupled with a natural desire to magnify their importance as lawmakers; but it is chiefly due to two causes: (1) the growing complexity of modern life and the rise of many new interests that seem to demand attention; and (2) there is so great a distrust of legislatures, and charges of incapacity and corruption are so common, that conventions incline to limit and regulate in every possible way the powers of legislatures, so as to reduce the possibility of mischief. Time and experience will probably remedy this wordy defect and it is not likely that any future constitution will surpass in size that of Louisiana. Constitutions so verbose require frequent amending. The first legislature of Louisiana, for instance, after the adoption of its unwieldy constitution, submitted one amendment; the second legislature, six; and the third legislature fifteen. Such a system hopelessly confuses the distinction between fundamental and statutory law, and is unnecessary if conventions understand their business.

They can in many cases omit whole articles, sections, or paragraphs. They can omit very many petty details that might be

[7] Alabama uses thirty-three thousand words, Virginia thirty-five thousand, and Louisiana, about forty-five thousand.

left with perfect safety to legislatures. If more attention were paid to improvement in the quality of legislators, matters of still larger importance could be wisely left to their discretion. This improvement can be obtained by the use of smaller houses, longer terms, and better pay, supplemented by efficient primary and election laws. Again, the referendum is now so well understood that it can be effectively used, along with the governor's veto, as a check on vicious legislation. In other words the real check on a legislature is not secured by turning the constitution into a statutory code, but by making use of the experiences of our states and their most successful devices in securing efficient government.

Miscellaneous Matters.—A comparison of constitutions shows that a constitution regularly consists of a preamble, an enacting clause, a bill of rights, articles on the several departments of government and their subdivisions, an article defining suffrage privileges, an article of miscellaneous provisions, an article devoted to amendment and revision, a ratification clause, and a schedule containing provisions of temporary importance, such as arrangements for the substitution of the new for the old order of things.

The *Preamble*, which is a statement of reasons and purpose, is regularly included in the same paragraph as the enacting clause (Delaware's is an exception). In general it follows the thought of the preamble of the national constitution, but differs in that some reference to God is regularly found in the preambles of the states.[8]

In thirty enacting clauses the wording is: "We, the people . . . do ordain and establish." In most of the others the wording is either "We, the people . . . do ordain," or "We, the people . . . . establish." Maryland says, "We, the people . . . declare," three states omit the pronoun *We*, and one state, Tennessee, says, "We, the delegates." The most concise clauses may be seen in the constitutions of New York and Michigan. A lengthy type is that of Massachusetts.

In three of the constitutions,[9] the *Bill of Rights* comes first after the enacting clause or preamble, and before the articles. In thirty-three constitutions it makes the first article, in seven it is either the second or third article, in one, South Dakota, it is the sixth. One state, Michigan, more wisely omits it entirely by name, but

[8] But see Chapter X.
[9] Florida, Kansas, Maryland.

inserts its usual provisions under their proper heads in the main body of the constitution.[10]

Twenty-one of the constitutions contain each an article defining the boundaries of the state. This is not a matter over which the state has final jurisdiction, and the article properly is omitted in most of the constitutions. Thirty of the constitutions contain a short, but unnecessary article on the "Distribution of Powers." Seventeen of the thirty use this particular title, but the other thirteen use seven variations of this wording. Seven of the other fifteen constitutions mention the separation of powers in other articles, but the other eight save space by omitting it entirely. A simple form of the article may be found in the constitution of Rhode Island, the ordinary form is that of Indiana, and an exaggerated form is that of Alabama, which copied the substance of its provision from Massachusetts. In arranging the order of the usual three departments of government, the arrangement regularly is, legislative, executive, judicial; but three states[11] place the executive before the legislative, following the historical order, rather than the order of importance. As the electorate represents the people, there is a marked tendency in many of the constitutions, seventeen in all, to place the article on suffrage among the first, as though to emphasize the precedence of the voters over the several departments of governments. This article logically should be called The Electorate, or Qualifications for Electors, but as a rule some variation of the term Suffrage is used instead.

A curious feature of some constitutions, old and new, is the insertion by requirement of congress, of an ordinance, which may not be repealed without the consent of congress, Article III in the constitution of Utah for example. Congress has full power to demand that a territory place certain articles in its constitution as a prerequisite to admission. Once the territory becomes a state, however, the obligation to retain such articles is probably moral, not legal. Otherwise, it would be hard to say just how such "irrevocable" articles can be reconciled with any constitutional theory of the equality of states in their local sovereignty. It might be interesting to speculate as to what would happen if one of these states should later deny the right of congress to place perpetual

[10]For instance under Articles IV, VI, and XVIII.
[11]Colorado, Kansas, Maryland.

limitations on its sovereignty as a state of the Union. Territories, however, in becoming states have learned not to "look a gift horse in the mouth," and congress in its turn may prefer to ignore the fate of such articles after the lapse of a few years' time.[12]

The *Schedule* is now regularly found in most of the constitutions (32), though almost unknown in the earlier constitutions and not now always essential. Its place properly is as an addition to the constitution, not as a part of it, since its provisions are of temporary importance only. Seventeen constitutions, however, include it in the constitution itself as one of the articles. In some cases this is due to a failure to keep the schedule for temporary provisions only, matter being inserted which might more properly go under Miscellaneous Provisions.[13] The better place for the schedule may be seen in the new constitutions of Delaware, Alabama and Virginia, though it might more correctly be placed after the ratification clause, so as to keep it entirely separate from the constitution. Its authority could be attested by the signatures of the president and secretary of the convention as in the case of ordinances. So much space is taken up in constitutions with apportionments of districts and their boundaries, that the question arises why these should not be placed in the schedule, and authority given the legislature to alter them at its discretion, without referendum. The use of the *ordinance* is well illustrated in the work of the last convention that made a constitution for South Carolina.

A matter of some little importance is the method of numbering the several sections of the constitution. A cumbersome and old-fashioned system may be found in the constitution of Massachusetts. The others, with some exceptions, use the plan of the national constitution, viz., articles numbered with Roman numerals subdivided into sections with Arabic numerals. Louisiana, Mississippi, Kentucky, Alabama, Virginia and North Dakota much more sensibly imitate the earlier French constitutions, and number paragraphs consecutively with Arabic numerals, inserting titles in their proper places with or without Roman numbers. New Hampshire uses the same system, except that its constitution is divided into two parts, and each is numbered consecutively.

[12]The enabling act for Oklahoma is unusually severe in its requirements of this sort.

[13]This article may be overworked. Texas, for example, has fifty-seven sections in its General Provisions.

CHAPTER III.

Amendment, Revision, and Bills of Rights.

Amendment and Revision.—The amending article of a constitution undoubtedly demands most careful attention. In some respects it is its most important article. It may be so worded as to make the constitution practically unalterable and thereby hinder progress. Many of our states are thus hindered and can find no way out of their dilemma. Such blunders in phraseology would be entirely unnecessary, if conventions were familiar with the experiences of many of our states, and with the development of our processes of amendment. An explanation of these processes will now be set forth, as briefly as the importance of the subject will admit.

Some of our earliest state constitutions contained no provisions for their amendment. This proved no bar to alteration, for they were amended or revised like ordinary legislation or in convention. Gradually provisions were introduced authorizing the legislatures to submit amendments for popular approval or rejection. In some constitutions there was a further provision that an entire revision might be made by a convention convoked for that special purpose. This body was usually called together by the legislature, but in two states, Pennsylvania and Vermont, by a special body known as the board of censors, which was empowered to convoke a convention and to submit amendments.

In recent years at least five legislatures have authorized special commissions to recommend amendments, viz., New York, 1872; Michigan, 1873; Maine, 1875; New Jersey, 1881; Rhode Island, 1897. In Louisiana a joint committee of both houses prepared in 1894 a series of about twenty amendments. The reports of two of these commissions, Michigan and Rhode Island, were not simply amendments to the constitutions, but complete revisions thereof. Both these revisions were rejected when submitted in Michigan, March, 1874, and in Rhode Island, November, 1898, and again in June, 1899. The report of the New Jersey commission was never finally acted on, and the reports of the Maine and

New York commissions were adopted in part. The Louisiana report was entirely rejected at the polls in 1896. At the present time boards of censors are no longer used, and commissions can hardly yet be considered a permanent feature of our amending system. There remain, therefore (1) the method of revising through a convention especially convoked for that purpose, and (2) the method of amending through the initiation of the legislature and ratification by popular vote.

Revision.—All but thirteen[1] of the constitutions expressly make mention of a convention for the purposes of revision. It is now considered far better to do so. Although the best authorities assert that states can call conventions under general legislative powers, and nearly all have done so one or more times, yet it is far safer to insert the provision expressly, with such safeguards as will allow the use of a convention whenever necessity demands. Six states provide that the question of calling a convention must be submitted at stated intervals, every twenty years (Maryland, Ohio, New York), sixteen years (Michigan), ten years (Iowa), and seven years (New Hampshire); but in that case it is better to insert as New York does "and also at such times as the legislature may by law provide."

When constitutions authorize a convention, the usual procedure is that the legislatures submit the question to referendum. Nineteen of the states require that the referendum be authorized by a two-thirds vote of each House, nine require a majority and one a three-fifths vote. The real difficulty in calling a convention arises from the wording in regard to the referendum vote. No matter how much interest there may be in a state on the question, it is simply impossible to get a much larger vote on the referendum than about one-half of the usual vote at a general election. If therefore a constitution provides that a "majority of the voters of the state," or "a majority of all the voters voting at a general election" must vote for a convention, that state might almost as well give up all thought of ever holding a convention.

Fifteen states have such requirements and in consequence can hold conventions if at all only after years of agitation and expense.[2]

[1]Massachusetts, Connecticut, Vermont, Rhode Island, New Jersey, Pennsylvania, Mississippi, Louisiana, Texas, Arkansas, Indiana, North Dakota, Oregon.

[2]For late cases bearing on this question see State *vs.* Powell, 27 So. 927; Russell *vs.* Croy, 63 S. W. 849; *In re* Denny, 59 N. E. 359.

Twelve states more wisely word the requirement a "majority of those voting thereon," and thereby avoid future trouble. Most of the constitutions (19) require that the referendum be submitted at a general election, but a few leave the time to the legislature or require a special election. Experience shows that it is safer to specify the basis of representation in the convention. It should never be the same as the legislature itself, though four states have such a provision, Maryland for example. Sixteen constitutions use the house as the basis, requiring that it be equal in membership to that of the house (Nebraska for example) or double (Wyoming) or based on population (Georgia). Delaware uses the house basis and adds two from each county, but there are three counties only in the state. Three require that it be twice that of the senate (Illinois, Colorado, Missouri), and New York requires that it be three times that of the senate plus fifteen elected at large. In the earlier years of our history conventions frequently promulgated constitutions made by them on their own authority, without referendum. After the first generation, however, the contrary held true in the main down to 1890. Since that year five conventions have promulgated constitutions without referenda.[3] Conventions have that power unless restrained by local precedent, statute, or constitution, and for that reason fourteen states require that no constitution go into effect unless ratified by the people. In some cases they also specify the vote, as in the case of a convention, viz., "a majority of those voting thereon" (6) or "a majority of the electors voting at the election" (4). The straits to which a state having this last requirement may be driven is shown by legislation recently passed in Nebraska 1901 and Ohio, 1902. Those laws declare that if a state convention of a political party declares for or against a constitutional amendment, such declaration shall be considered a portion of the party ticket, and that a straight vote for the party shall be counted as a vote for or against the amendment. How much better not to insert such requirements than to have to resort to such devices!

Voting on Amendments.—Constitutions regularly provide that when legislatures pass amendments the vote must be by yea and nay and recorded. Provision is also made for publication for a certain specified number of weeks or months before the election.

[3] Mississippi, South Carolina, Delaware, Louisiana, Virginia.

Publication is usually required to be through the newspapers but may be "after such publication as may be deemed expedient" (California).

Forty-four of our states provide methods of amendment, the exception being New Hampshire, which amends only through a convention. When constitutions were brief and contained nothing but fundamentals, the process of amendment was properly difficult. This was attained by the requirement of the action of two legislatures, and large fractions in voting. But when constitutions became lengthy as at present, the process had to become easier. This development may be seen in the following statements:

Eighteen states still require the action of two legislatures on amendments, one is sufficient in the other twenty-six. If sessions were annual as formerly, the requirement of two sessions meant a period of two or three years from initiation to referendum. But with biennial sessions the time lengthens to four or five years. One session, therefore, is naturally dropped. Of the states that still require the action of two legislatures Delaware alone uses no referendum. South Carolina and Mississippi have the referendum take place between the action of the two legislatures. Connecticut, Vermont, Massachusetts and Tennessee have variations in voting requirements and the other eleven[4] states have action of two legislatures precede the referendum.

Seventeen constitutions require that amendments be submitted by two-thirds vote of each House, sixteen require a majority only, and seven a three-fifths vote, Four of the states that employ action of two legislatures require one action by two-thirds vote and the other by majority.

The referendum requirement in twenty-eight states is "a majority of those voting thereon," fourteen have some variation of the objectionable "majority of electors" already referred to, Rhode Island requires a three-fifths vote, New Hampshire requires a two-thirds vote, and Delaware, as already said, uses no referendum for amendments. A general election is specified in twenty-one constitutions. To avoid "rider" amendments, twenty-eight of the States require that each amendment shall be submitted separately. Kentucky adds that each must contain one subject only, and Ala-

[4]Rhode Island, New Jersey, New York, Virginia, Pennsylvania, Indiana, Wisconsin, Iowa, North Dakota, Nevada, Oregon.

bama insists that the substance of each be printed on the ballot. Six states place limitations on the number of amendments to be submitted at one time, the number varying from two to six (Colorado as amended 1900). Five states forbid action on a rejected amendment until after a specified period, varying from four to six years (Tennessee). While it is fairly well understood throughout the United States by precedent and decision that the executive has no right of veto over actions on conventions or amendments, yet Alabama, Kentucky and Mississippi make assurance doubly sure by saying so.[5]

The Initiative and Referendum.—The most interesting experiment in constitutional amendment of recent years is found in an amendment adopted in Oregon June, 1902. This authorizes 8 per cent of the voters of the state to initiate amendments to the constitution. These, if presented four months previous to a regular election are voted on at the election, and a majority of votes in favor puts them into operation. Neither assembly nor governor has a voice in the matter. As Oregon's constitution heretofore has been almost impossible of amendment because of the difficulty of its requirements, there should result a vigorous application of the popular initiative so as to remove obsolete provisions. The new method has already been used effectively to bring about needed reforms, and its adoption by other states during the next few years may safely be prophesied.

Bills of Rights.—All states but Michigan contain in their constitution formal bills of rights. Twenty-two prefer the title Declaration of Rights, but twenty use the other form. Michigan places the essential provisions of the formal bill under their proper headings, such as Legislative and Judicial Departments, and thereby sets a good precedent. Maryland has the largest number of provisions, forty-five. Louisiana has the fewest, fifteen. Twelve states have thirty to forty; twenty-one have twenty to thirty, and ten manage to get along with less than twenty. A bill of rights properly should contain only broad general principles in regard to the purposes and spirit of government, and general instructions and prohibitions declaring the fundamental safeguards for life, liberty and property. These principles of liberty and democracy are now so thoroughly ingrained in our legal systems as hardly to

[5]For the last decision on this matter see Commonwealth *vs.* Griest, 196 Pa. 396.

need explicit statement in a constitution, yet they will doubtless be long retained as assurances against possible legislative tyranny and as mementos of former struggles. They include guaranties of life, liberty, property, and happiness; freedom of conscience, speech, press, petition, and assembly; *habeas corpus*, open courts, a fair trial and the jury in cases of crime; the right to bear arms, to hold free elections, and to "reform, alter or abolish forms of government;" guaranties against unreasonable search, seizure, imprisonment or bail; and provisions in regard to treason, martial law, and imprisonment for debt. Evidently such provisions as these are well worth preserving in our fundamental law. On the other hand one may question whether it is worth while to retain references to the exploded theory of social compact, or to guaranty the right of emigration, or to insert provisions in respect to lotteries, lobbying, dueling, pensions, punishments, social status, contempt of court, tenure of office, and the rights of labor. Such matters may or may not deserve place in our constitutions, but surely not in a bill of rights. Again, when a simple right of earlier days becomes complex, it might better go into the main body of the constitution under its appropriate heading. Trial by jury, for instance, is frequently modified nowadays by waiving it altogether in certain kinds of cases, or by changes in the traditional number and the unanimous verdict. Such modifications properly belong to the judicial department. Again, the statement that "the property of no man shall be taken for public use without just compensation therefor" (Connecticut), is simple enough, but when this right is hedged about with numerous explanatory clauses[6] it might better be transferred to the legislative department.

In general it may be said that our numerous bills contain too many provisions of doubtful truth, of local or temporary importance and of details that properly belong to other articles. Many of the newer provisions found in some bills are in others placed under more appropriate headings in the constitution, so that there seems to be a real confusion as to what should or should not be inserted. There are some new provisions now very generally inserted in the later constitutions that are important enough to become permanent additions to bills of rights. Two at least are so important that a convention failing to insert them in substance somewhere

[6]See for example California, sec. 14.

in the constitution should be considered derelict in its duty. Thirteen constitutions for instance read, "No money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect, or religious denomination, or in aid of any sectarian institution," and seven insert the provision that "Every grant or franchise, privilege or immunity, shall forever remain subject to revocation, alteration, or amendment."[7]

There are two provisions rather generally inserted in bills of rights which, though not so essential as they were once, yet deserve place for historic reasons if not otherwise. They are "The rights enumerated in this bill of rights shall not be construed to limit other rights of the people not therein expressed," and "The provisions of this constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise." In conclusion of this topic it may be said that many states have found the substance of the first eight amendments to the national constitution to be the best basis for their own bills of rights.

[7]There are numerous variations of these two provisions in different articles of other constitutions.

CHAPTER IV.

SUFFRAGE AND ELECTIONS.

Suffrage.—Our States have the right to declare in their constitutions who shall exercise suffrage within their several jurisdictions. The restrictions on this power in the national constitution are simple and few in number.[1] Our democratic tendency is shown by the fact that, whereas in the revolutionary period the privilege of suffrage was held by less than 6 per cent of the population, it is now held by about 20 per cent. The per cent was even larger in 1870, but restrictions have since crept in. These several restrictions will now be indicated in turn.

It was once common in thinly settled states to allow aliens who had taken out their first naturalization papers to vote even in national elections. Nine states only still retain this provision;[2] six have changed within the last ten years.[3] Some of the nine would likely change if their constitutions could be amended with ease, for the tendency is to reserve suffrage privileges for full-fledged Americans only.

An educational qualification is rapidly passing into our constitutions through a belief that voters should be intelligent, and that this on the whole is best indicated by the ability to read and write. Such a restriction of course would be undemocratic if not coupled with provisions for a free and general education. Fourteen states now have educational restrictions, and these should be considered in two sets. Eight states compose the first set;[4] two require ability to read English (Connecticut and Wyoming); one to read and speak English (Washington), and the other five to read English and write the name. The other set[5] consists of six southern states which have an educational qualification as one of several alternatives. The details to these are too numerous to

[1]Art. I, sec. 2; Art. IV, sec. 2; Amendment XIV, sec, 1; Amendment XV.

[2]Arkansas, South Dakota, Indiana, Texas, Kansas, Missouri, Nebraska, Oregon, Wisconsin.

[3]Florida, Michigan, Minnesota, Alabama, Colorado, North Dakota.

[4]Connecticut, 1855 and 1897; Massachusetts, 1857; Wyoming, 1889; Maine, 1893; California, 1894; Washington, 1896; Delaware, 1897; New Hampshire, 1903.

[5]Mississippi, 1890; South Carolina, 1895; Louisiana, 1898; Alabama, 1901; Virginia, 1902; North Carolina, 1902.

specify, but, with the exception of Mississippi, which requires the ability to read or understand, all require the ability to read and write, Louisiana making the proviso that it may be in English or in the mother tongue.

The chief restriction on suffrage in earlier days was the property qualification. This still survives in many states in the form that referenda involving the expenditure of money shall be voted on by taxpayers only. Aside from this, the property qualification by 1890 had entirely disappeared from the United States except in Rhode Island, where there is a property requirement of one hundred and thirty-four dollars for suffrage in the election of members of city councils. Five constitutions in their bills of right formally state their objection in declaring that the holding of property should not be considered as affecting the right to vote and hold office. Since 1895 several of the southern states have introduced this restriction as one of the alternatives for suffrage. It was inserted as a temporary requirement by Virginia in 1902 and is a permanent requirement in the constitutions of South Carolina, Louisiana and Alabama. The qualification is the possession of property valued at the minimum of three hundred dollars. Those interested in the famous temporary provisions in certain southern constitutions intended to disfranchise the negroes, should consult the suffrage articles of Louisiana and North Carolina for the "grandfather" clause, and of Alabama and Virginia for the "old soldier" clause. An amendment relating to suffrage including a "grandfather" clause was rejected November, 1905, by Maryland.[6]

As women are citizens and all citizens by theory are entitled to the same privileges, women are entitled to the suffrage equally with men unless the constitution is worded or can be interpreted otherwise. Definite agitation for women's suffrage has been carried on since 1848, but in state elections small progress has been made. Four states at the present time allow women full suffrage.[7] Referenda on the question have been rejected during the last few years (1894–1903) by six states.[8] It is much more common (twenty-four states) to allow women suffrage in school and occa-

[6]See also article on Negro Suffrage, by John C. Rose, Am. Political Science Review, Nov., 1906.

[7]Wyoming, 1889; Colorado, 1893; Utah, 1895; Idaho 1896.

[8]Kansas, California, Washington, South Dakota, Oregon, New Hampshire.

sionally in library matters.[9] Kansas in 1886 granted women municipal suffrage, and Montana, Iowa, and Louisiana by constitution allow women taxpayers to vote on certain referenda involving expenditures. It is on the whole expedient for conventions in considering suffrage, to decide what privileges, if any, women are to have, and then to state them in express terms.

Registration is now a common form of restriction. The former prejudice against it may still be found in the constitution of Arkansas which declares that registration shall not be a prerequisite for voting. This is the only state retaining the provision, as Pennsylvania removed it in 1901 and West Virginia in 1902. About twenty constitutions expressly authorize registration, though legislatures could probably pass such laws under their general powers unless restrained by some provision in their constitutions. The restrictive feature in registration is that the person who claims for himself the privilege of suffrage may be required to present himself in person, by a certain date, and prove his right. The necessity of a personal application will invariably disfranchise a large per cent of the voters, who will neglect to make application. This will prove to be especially true if the date set is several months before an election. The excitement of a campaign would bring out many who otherwise will fail to register if the date set is early in election year. If the proof involves the presentation of naturalization papers or tax receipts it may be assumed that another large per cent of voters will fail to appear. If all these requirements are found, viz., personal application, a long time before an election, and prepayment of taxes or other proof, the list of voters may easily be cut in half. Add an educational or property qualification, and the task of counting voters will be reduced to a minimum. Space will not allow further details, but a study of the constitutions of the six southern states already referred to,[10] and a comparison of the votes cast in those states before and after the passage of such laws, will abundantly illustrate the utility of rigid registration laws as a means of restriction. These same southern constitutions will furnish illustrations of that other form of registration, in which the name of the person once registered is retained on the lists for life or for a specified term of years, the lists being corrected annually

[9] See for example the constitutions of Washington, North Dakota, South Dakota, Idaho, Montana, Minnesota.

[10] In the third paragraph of this chapter.

or biennially by the several boards of registration. It must not, of course, be understood that registration is merely a means of restriction. It is intended fundamentally as a safeguard against illegal voting, but it is clearly evident that it can be used to cut down considerably the number of voters.

Besides these restrictions there are in practically all constitutions prohibitions of suffrage to minors under twenty-one years of age, to idiots, insane persons, and persons convicted of crime. Some specify crimes in elections and dueling. This last of course would be a bill of attainder unless dueling were a crime by statute and conviction had taken place. There is also always a restriction in the form of a requirement of residence within the state, county and precinct. In the forty-five states there are twenty-five variations in the times set! On the whole it may be said that the average preference is one year's residence in the state (twenty-six states), six or three months in the county, and thirty days in the precinct. Seven states require a two years' residence, and eleven states six months. The constitutions also regularly contain a provision defining under what conditions a residence is neither gained nor lost.[11] The prepayment of taxes, property or poll, as a form of restriction has already been mentioned. It exists in a very few states. For examples, see Delaware, Pennsylvania, Tennessee and Texas (amendment 1902), in addition to the six southern states mentioned in the third paragraph of this article. The most stringent requirements will be found in the constitutions of Mississippi, Louisiana and Virginia.

Elections and Political Parties.—Thirteen of the constitutions include elections along with suffrage, under some common title, such as Suffrage and Elections. Two (Rhode Island and Kansas) have separate articles for each subject and the others as a rule scatter provisions regarding elections throughout the constitutions. It would add to clearness if all provisions in regard to elections and political parties were placed together under some appropriate heading, especially as unusual attention is being paid to such matters at present.

As congress in 1871 provided that elections for members of the house of representatives should take place in even years, on Tuesday after the first Monday in November, states have tended

[11]For example see California, II, 4.

to place their own elections on the same day so as to avoid duplication of expense and work. Four states, however, still prefer to use the odd years,[12] so as to separate state from national issues. The last to change from odd to even were Iowa in 1904 and Ohio 1905. Eight states still hold their general elections in months other than November, and three of these by special arrangement hold the national election at the same time (Oregon first Tuesday, June; Vermont first Tuesday, September; and Maine second Monday, September). Two states still retain the old-fashioned annual general election (Massachusetts, Rhode Island). New York and New Jersey elect their lower houses annually; three of the newer constitutions (Alabama, Louisiana, Mississippi) provide for a quadrennial election, and all the other constitutions provide for an election biennially.

A system of registration for voters (already discussed), a system of nomination, including the primary; the election, including the form and method of voting; and the count, are all matters that properly fall under the jurisdiction of the state and may be mentioned in the constitution or more properly left to statutory regulation. The chief requirement found in constitutions (in about thirty) is that voting be by ballot. Others authorize it by law. Congress also makes this requirement for national elections. Since the introduction of the Australian ballot system there is a tendency to say *Secret* ballot (nine states). As the voting machine is not a ballot, states desirous of using this mechanism, yet having a ballot requirement, must add an amendment specifying a voting machine or some other device "provided that secrecy in voting be preserved."[13] A few states (five) require that the ballots be numbered and a few others require that the ballot include the party emblem (for example Louisiana) or on the other hand arrange candidates alphabetically (Virginia, Wyoming). There are very few constitutional provisions in regard to the primary and the count, such matters are regularly left to legislatures.

Nearly all constitutions contain some provision against fraud

[12]Kentucky, Maryland, Mississippi, Virginia.

[13]See for example Utah, New York, Virginia; and recent amendments to constitutions of Pennsylvania, Connecticut, and California.

and bribery, but legislative ingenuity has not yet succeeded in making a really effective "Corrupt Practices" act.[14]

Political parties are voluntary associations and not part of the state's electional machinery. The state under its police powers has the right to regulate them but should not make the blunder of assuming that political parties represent all voters. If a legislature for instance regulates the party primary or the party ballot, it must arrange that independents also be able to express their choice in nomination and on the official ballot. Any departure from this principle must be expressly specified in the constitution or run the risk of being declared unconstitutional.[15]

So far as constitutions are concerned there is very little attempt to regulate party organization, such matters being left to statute. Louisiana in articles 200 and 215 gives the gist of what few provisions may be found in other constitutions.

[14]See Kentucky, Delaware, Maryland for illustrations of constitutional provisions.

[15]For recent cases bearing on this point, see Spier *vs.* Baker, 52 P. 659; Britton *vs.* Board of Election Commissioners, 61 P. 1115, and amendment to constitution of California regarding primaries adopted 1900.

CHAPTER V.

The Executive Department.

One of our favorite political theories is that of the separation of powers. The several powers of government are grouped under three main heads and each kind placed in charge of a distinct set of officials. In practice these divisions can not be entirely separate, and a system of "checks and balances" is used so as to co-ordinate and unify the work of government. Executive powers properly include the war and treaty power, the power of oversight, under which is placed the veto power, and the power of appointment and supervision over the administrative departments.

One of the chief defects in our present state constitutions is that these executive powers have not received proper attention. The theory of separation has been disregarded and the legislature has been allowed to share these powers with the executive, with disastrous results. There is at present a strong centralizing tendency in economic and political life, and one effect from this is increased attention to the proper place of the executive in government. This is plainly indicated by a comparison of the articles entitled "The Executive Department."

The requirements for the office of governor are practically the same in all the states. The governor must be at least thirty years of age (four states require twenty-five or thirty-five years), a citizen of the United States for a period varying from five to twenty years (Maine requires that he be native born), and a resident of the state for a period of from one to ten years. If the election results in a tie, the procedure is the same in almost all the states, viz., the legislature in joint session selects a governor from the leading candidates. The usual procedure is modified somewhat in five states.[1]

A few states specify his salary in the constitution, others do so but authorize the legislature to change it, and the remaining states wisely leave the matter to the discretion of the lawmaking body. In passing, it may be said that the increase in the cost of living with

[1]Maine, Massachusetts, Vermont, Georgia and Mississippi; this last state elects its governor through an electoral college.

other reasons, is resulting in a steady increase in salaries paid to state officials. Twenty states now pay the governor five thousand dollars or more, and only five states pay two thousand dollars or less. Fifteen states place restrictions on a governor's re-election, the usual form being a prohibition against two successive terms; three states forbid him to be a candidate for the United States senate while in office (Alabama, California, Utah), and New Jersey forbids its legislature to elect him to any other office "during the term for which he shall have been elected governor." Nearly all forbid a state officer to hold a position of trust under the federal government and should forbid him to hold more than one office within the state. (See Florida, Art. XVI, 15.)

The term of office is four years in twenty-one states, two years in the same number of states, three years in New Jersey and one year in Massachusetts and Rhode Island. The tendency is toward the longer term, not away from it,

The governor has certain routine duties common to all states; he represents his commonwealth in its dealings with other states, he may summon the legislature in special session or adjourn it in case of disagreement, he "must take care that the laws be faithfully executed," may commission officers and fill vacancies *pro tempore*, and is the commander of the military and naval forces of the state.[2] He regularly has large powers in pardoning, which he exercises on his own authority or partly in connection with the legislature or senate (twenty-nine states) or by the aid of a board (thirteen) or council (three.) He regularly has the power to make formal recommendations to the legislature, and may request information under oath, or opinions in writing, from the several officers of administration. Aside from these usual powers, which require no special mention, attention must be given to (*a*) the veto power and (*b*) his power in administration.

The Veto Power.—In 1788 two states only (Massachusetts, New York) gave the veto power to the governor; in 1906 North Carolina and Rhode Island alone withhold it. The need of an efficient check on legislation simply compelled the change. In the national constitution, a veto is overridden by a two-thirds vote of

[2]Twenty-six, even some of the inland states, mention *navy;* Massachusetts and New Hampshire have similar quite thrilling and sanguinary paragraphs on the war powers of their governors as commanders-in-chief and admirals of the respective forces of their states.

both houses of congress; this fraction is preferred by thirty-one states, but nine[3] specify a majority, and three a three-fifths vote.[4] This vote must be by yea and nay and recorded. Taking warning from experience, thirty states now allow the governor to veto items of appropriation bills[5] and three of these also allow him to veto part or parts of any bill.[6]

The time given to the governor for the consideration of a bill varies from three to ten days, twenty preferring five days, eleven ten days and the others three or six days. If adjournment intervenes between the sending of a bill to the governor and its return approved or vetoed, twenty-two constitutions declare the bill passed and seventeen declare it not passed. Ten states[7] allow the governor a period of from three to thirty days to decide whether or not to approve such bills; eighteen states[8] allow him from five to thirty days to file objections with the secretary of state, if he desires; and nine states[9] require that such bills with objections be referred to the next legislature for its consideration.

The constitutions seem to be in doubt whether to consider the veto as executive or legislative in kind; thirty prefer to place it under the executive department and twelve follow the national constitution in classifying it under legislative. Vermont has it among the amendments, and two states, as already said, allow no veto.

This power of veto lodged in the executive, especially when coupled with the power to veto items and to approve or disapprove after adjournment, has become a most effective restraint on legislative action, and has been vigorously used to enlarge executive powers and to conserve public interests.

Administration.—The power of the executive over administration has during the course of our national history undergone

[3]Alabama, Arkansas, Connecticut, Indiana, Kentucky, New Jersey, Tennessee, Vermont, West Virginia.

[4]Delaware, Maryland, Nebraska.

[5]The thirteen states not yet granting this power are Connecticut, Florida, Indiana, Iowa, Maine, Massachusetts, Michigan, Nevada, New Hampshire, Oregon, Tennessee, Vermont, Wisconsin, all old constitutions.

[6]Washington, Virginia, Ohio.

[7]Alabama, California, Delaware, Iowa, Michigan, Minnesota, Missouri, Montana, New York, Virginia.

[8]Arkansas, Colorado, Florida, Idaho, Illinois, Indiana, Kentucky, Nebraska, Nevada, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Utah, Washington, West Virginia, Wyoming.

[9]Florida, Indiana, Maine, Mississippi. Nevada, Ohio, Oregon, South Carolina, Washington.

some remarkable changes. This power was in the early constitutions deplorably weak, since in those days legislatures controlled administration also. The present constitution of Rhode Island is an excellent illustration of this old-fashioned type. As governmental business multiplied through the growth of population and wealth, legislatures tried to handle these increasing duties, first, through committees, temporary and then permanent, and finally through the organization of departments, boards and commissions. Most of our states are still in this stage of development. Every new line of activity results in the formation of a special board or commission until these can be counted by the score in almost any state, a joy to the spoils politician, but the despair of every taxpayer. Under such conditions the administration of the state becomes unwieldy, wasteful, and thoroughly unbusinesslike. Each department, board, or commission drifts along under the nominal control of the legislature, united only by the bond of a common affection for the state treasury.

This evil has for some time attracted the attention of the leaders in our several states, and the remedies devised by them are already working their way into the newer constitutions. The substance of these changes is that administrative power is taken from the legislature and transferred partly to the electorate but chiefly to the executive, where it properly belongs. The methods by which this has been done will now briefly be indicated.

Attention has already been called to the tendency toward a four-year term and a larger salary for governors. The same point holds true in respect to the heads of the important departments. Their terms are lengthening and their salaries increasing. In the case of the treasurer (fourteen states) and auditor or comptroller (three states) there is the same provision against re-election for successive terms. Heads of departments, instead of being elected by legislatures as formerly, are now almost invariably elected by the people. In a very few states[10] one or several of these heads are still chosen by legislatures, and by contrast in a few states[11] the governor has that privilege, but the movement sets steadily in the direction of popular election. Again, constitutions regularly specify what departments must be organized, and what powers they

[10]For examples see Maine, New Jersey, South Carolina, Tennessee, Virginia.
[11]See Delaware, Maryland, New Jersey, New York, Pennsylvania, Texas.

may exercise. These offices in almost all states include a secretary of state, a treasurer, an auditor or comptroller, an attorney general and a superintendent of public instruction. Another department is common enough, though going under widely varying names. Its duties in general are indicated by the term Internal Affairs (Pennsylvania). Besides these departments many constitutions name and define the powers of numerous boards, commissions, or bureaus, intended chiefly for purposes of general welfare, and for supervision of the larger economic interests of the state.

Conventions by thus placing such matters in the constitution have deprived legislatures of the power of altering them, and to that extent have developed an administration apart from the law-making body.

The next development is to require these several departments and officials to report semi-annually to the governor; to make him ex-officio member of the several commissions (Utah for example); to authorize him to investigate thoroughly any department or office at his discretion,[12] especially those handling the finances of the State,[13] and to place in his hands the power to suspend or remove those officers who seem to be derelict in their duties.[14] A few (nine) add to such powers the duty of presenting to the legislature at the beginning of each session the budget of anticipated receipts and expenditures. There is also a strong tendency to define more generously his power in removal and to increase his power of appointment in the case of officials other than heads of departments. This power he regularly exercises by and with the advice and consent of the senate, though the wisdom of this requirement may be questioned. It is impossible to specify these details by states in so short a space but a comparative study would show great differences in the extent of executive power. Compare, for example, some of the newer constitutions such as those of Alabama, Idaho, Montana, New York, Utah and Wyoming; and an older set, such as those of Colorado, Maryland, Missouri, Texas and West Virginia; and a still older set, such as those of Iowa, Oregon and Wisconsin; and finally the New England set as an awful example of what not to do.

[12]For illustrations of this see Idaho, Montana, Utah, Wyoming.
[13]For curious provisions see Georgia, Kentucky, Maryland, and Mississippi.
[14]See for example Michigan, xii, 8.

The reason for the longer term and larger salary of the modern governor is now obvious. His duties are so onerous that he must be adequately paid and time be given him to show his capacity as head of the administration. By centralizing administrative responsibility on his shoulders his office becomes powerful, commands respect and is eagerly sought after by capable men. It becomes also a prize in party politics and for that reason should be supplemented by an adequate civil service law modeled after one of the rival systems of either Massachusetts or New York.[15] In short, the loosely co-ordinated administrative system of the revolutionary period is at last disappearing, and in its place the states are centralizing administrative powers into the governor's hands, as in the national system.

Future conventions will likely pay much more attention to the proper organization of the administration, which should be arranged in a separate article apart from the executive. A beginning in this direction already has been made in eight constitutions,[16] but imperfectly, as these were prepared before present evils had fully developed.

A check should be put on so rapid a multiplication of semi-independent boards, bureaus, and commissions. Some are useless and others could be consolidated. By centering responsibility in the governor, efficiency and economy become possible, and his hands should be strengthened against party demands by the merit system of appointment and tenure.

Thirty-two of the states have lieutenant governors, and thirty of these make that officer president of the senate. In the other thirteen states[17] and in Massachusetts the senate elects its own presiding officer, and the constitution arranges the order of succession in case of the death or disability of the governor. An elaborate paragraph on succession may be found in the new Alabama constitution. Three of the New England states still retain the old-fashioned executive council (Massachusetts, Maine, New Hampshire), and a modification of it may be found in North Carolina. Though not provided for by constitution, Iowa has an executive council and possibly other states also by custom or statute.

[15]See Article V, sec. 9, New York constitution.

[16]See Article VI, Indiana, Wisconsin, Oregon; Georgia, Article V, sec. II; Colorado, Article XII; New Jersey, Article VII; Michigan, Article VIII, and Tennessee, Article VII.

[17]Arkansas, Florida, Georgia, Maine, Maryland, Mississippi, New Hampshire, New Jersey, Oregon, Tennessee, Utah, West Virginia, Wyoming.

CHAPTER VI.

The Judicial Department.

The judiciary is the department of our government which, up to recent years, has undergone fewest changes and given most satisfaction. The touching confidence of old-time constitution makers in the wisdom and integrity of legislator and judge, may still be seen in the constitutions of the New England states, which dispose of the subject of judicial organization in few words, leaving it almost entirely to the discretion of the lawmakers. Contrast these with recent constitutions and the difference is marked. One of the chief sins of the Louisiana constitution is that it devotes about twelve thousand words to the courts of the state and of the city and parish of New Orleans. It is really a statute under the form of a constitutional article, and yet can be amended only by a slow and tedious process. But, though the chief of sinners in this respect, Louisiana is not alone in this tendency. The rapid multiplication of population and wealth, our democratic fondness for litigation and lawmaking, with social unrest thrown in as a disturber of the peace, all compel movements for the reorganization of the judiciary. The effect of this is seen in the addition to our constitutions of numerous pages devoted to the judicial department; for conventions, filled with distrust of legislatures, realize that a judicial system with organization and functions defined by constitution is beyond the power and control of the lawmaking body.

The American standard of judicial organization is a three-grade system of courts, consisting of a supreme court, an intermediate court usually known as a circuit, district or county court, and courts of the justices of the peace. The jurisdiction of the judges of the highest sets of courts regularly extends to all parts of the state, even though in some cases they are elected by districts.

The supreme court is regularly a court of appeals, usually, if at all, having original jurisdiction only in the issuance of prerogative writs; this power it regularly shares with the courts next lower in grade. A few states add other original jurisdiction.[1] In

[1]For example, California, Illinois, Indiana, Nebraska, North Carolina, Pennsylvania and some of the New England states.

some states the supreme court is called the court of appeals,[2] confusion arises when, as in New York, the supreme court is not a supreme but a district court. In Texas the supreme court has a separate organization for civil and for criminal business. Rapid increase of judicial business in many of our states during the last thirty years has burdened their supreme courts beyond reason. A temporary makeshift in use is to authorize a supreme court commission, so as to enable the court to catch up with its cases. In recent years this has been done by California, Florida, Montana and Nebraska. In New York (amendment 1899) not more than four justices of the supreme (district) court may be designated by the governor to serve temporarily as associate justices of the court of appeals. Another possibility is to organize a system of intermediate courts of appeal.[3] This additional grade, in cases when decisions are conflicting may add to the expense and time of litigation, hence there arises the system of increasing the number of judges and allowing these to sit in two or more divisions, and *en banc* only when necessary to settle disputes or in especially important jurisdiction. Those constitutions that failed to include some such provision for the relief of the supreme court are rapidly placing it in their constitutions by amendment.[4] Wisconsin has had to change the organization of its supreme court three times by amendment to constitution; in 1877, 1889, 1903. Still another possibility is shown in New Hampshire (1901) and Rhode Island (1903) which have organized each a superior court, having part of the jurisdiction formerly confided to the supreme court.

In view of this national tendency, it would be well if all constitutions hereafter would provide an adequate system for appellate jurisdiction, or leave to the legislature some discretion in respect to the organization of the supreme court.

Little needs to be said in regard to the other grades of court. There are wide differences in organization, and much is left to legislatures. There is little uniformity in name and many differences in jurisdiction. Information on such matters therefore, must be sought from the constitutions and statutes themselves or from some text book on the subject.

[2]For example in Kentucky, Maryland, New Jersey, New York.

[3]For example in Illinois, Indiana, Louisiana, Missouri, New York, Pennsylvania, Tennessee, Texas, and California in 1904.

[4]See for example Kansas, 1900; Florida, 1903; Colorado, 1904; Alabama, 1904 .

Tenure and Appointment.—Life tenure, and appointment through legislature or executive, was the method in vogue for the higher judiciary at the beginning of the nineteenth century. Only one state, Georgia, at that time elected judges for its higher courts by popular vote. The tendency is entirely the other way at the present time. Three states[5] still retain a life tenure, but all others fix a definite term. A long tenure is favored by three other states;[6] the other states vary from two years (Vermont) to twelve, over one-half (twenty states) favoring the six-year term; eight and twelve are the periods next favored. A class system is in use in almost two-thirds of the states, the number of classes varying with the period. By this system of retiring a part only of the bench at one time, the opinions of its members are less likely to be affected by political considerations, continuity in decision is maintained, and candidates for election, being fewer in number, receive more attention. The usual practice is to elect these at large, not by districts. The tenure of inferior judges is for a shorter term; if the supreme justices for example, hold for six years, the other two grades of judges hold usually for four and two years. Theorists regularly declaim against the election of a judiciary, yet the practice and experience of our states point the other way. The decisions of the American bench compare most favorably with similar decisions enunciated by appointed judges elsewhere, and the results justify the practice. Judges of the supreme court are still appointed by governor and council in Maine, Massachusetts and New Hampshire; in Delaware, Mississippi, and New Jersey by governor and senate; in Rhode Island, Vermont, South Carolina and Virginia, by the assembly; and in Connecticut by the assembly on nomination of the governor. Georgia in 1898 (assembly) and Louisiana (governor) in 1904, were the last to change to the elective system. The other thirty-four states elect their judges and show no tendency in the other direction. The usual provision for removal is by vote of the assembly (a majority or two-thirds) or through the governor after action by the assembly. Four states by constitution fix the retiring age at seventy years, Connecticut, Maryland, New Hampshire, New York.

The salaries of judges are far less frequently specified in the

[5]Massachusetts, New Hampshire and Rhode Island.

[6]Pennsylvania, twenty-one years; Maryland, fifteen; New York, fourteen years,

constitutions than those of other civil officers. Those that do, as a rule give the legislature power to modify at discretion. The statutes of our states show a strong tendency to enlarge salaries paid to judges, doubtless because of the broader learning and arduous labor demanded under present conditions of life. The rewards of law practice are now so great that capable judges can not be obtained except by adequate compensation.

The Jury.—It is plainly evident that the time-honored jury system is subject to amendment in these modern days. Several states[7] by constitution or by statue either abolish or authorize the legislature or the court to abolish at its discretion the grand jury. If retained, the number of its membership and of those who must concur is often stated.

Many constitutions arrange that a jury may be waived altogether in petty civil suits, or in more important cases by agreement, or in misdemeanors; or that the jury may be less than twelve, or a verdict may be rendered by a vote that is not unanimous. These modifications are too numerous to specify in detail but many such provisions may be found under bill of rights and judicial department.[8] These modifications in the jury system, though not in themselves so important, yet show a tendency worth noting. A state desirous of modifying its jury system should put a provision to that effect in its constitution, and must do so if its constitution contains some such provision as the following: "The right of trial by jury shall be preserved inviolate." It was once rather common in this country to allow a jury to be judge of the law as well as of the facts, the reaction against that older practice is shown by a provision in several constitutions that "judges shall not charge juries with respect to matters of fact but may state the questions of facts in issue and declare the law".[9] Maryland makes the opposite statement, Article XV, 5.

It is now common in most of our states to grant legal and equitable relief in one suit, a reform largely brought about through the influence of Justice Field (David Dudley Field). A provision

[7]See for example Michigan, Colorado, Illinois, Minnesota, Missouri, North Dakota, South Dakota, Wisconsin, Wyoming, Utah, Washington.

[8]Most of the constitutions contain such provisions but, as illustrations, see Idaho, Louisiana, Montana, North Carolina, South Dakota, Virginia.

[9]Delaware; also Arkansas, California, Nevada, South Carolina, Tennessee, Washington.

authorizing such procedure is found in several constitutions.[10] "There shall be but one form of civil action, and law and equity may be administered in the same action." Following up this tendency many constitutions provide for tribunals of conciliation[11] whose decisions are not to be obligatory unless by mutual consent.

Certain minor judicial features of our state constitutions may briefly be mentioned as indicative of the present trend. It is quite usual, especially in new constitutions, to define the boundaries of judicial districts. This is purely a matter of detail that might better be placed in the schedule and left to be amended by ordinary statute. Thirteen states expressly authorize the supreme court to superintend and control inferior courts;[12] six states provide that judges may suggest improvements in the law for legislative action.[13] Four of the older states[14] still allow the governor or assembly to ask the supreme court for opinions on important questions of law, or on "solemn occasions." South Dakota and Florida allow the governor this privilege but all the other states wisely prefer to keep the supreme court out of politics and omit the provision.

Idaho and North Carolina authorize the supreme court to hear claims against the state but its decisions are to be merely recommendatory. The senate as a court of impeachment still holds its place in the judicial system, though it is an exceedingly cumbersome and somewhat antiquated method of trial. In New York the judges of the court of appeals are added to the senate in such trials. Oregon only, of all the states (VII, 19), has no provision for impeachment.

An attempt to define libel is a marked feature in many constitutions. This may be found either under Bill of Rights or Judicial Department. Among the most elaborate of these are the provisions found in the constitutions of Michigan, California, Pennsylvania, Alabama and Arkansas. Many states make a judicial officer ineligible to any other than a judicial office. Some states refuse him permission to be absent from the state for a longer

[10]Among these may be mentioned California, Idaho, Kentucky, Montana, New York and Texas; see also Ohio, Article XIV.

[11]Alabama, Kentucky, Louisiana, Michigan, North Dakota, Wisconsin for example.

[12]Alabama, Arkansas, Colorado, Iowa, Louisiana, Maryland, Michigan, Missouri, Montana, North Dakota, South Dakota, Wisconsin, Wyoming. Oregon gives this power to its circuit courts. See also Texas and Washington for modified powers.

[13]Colorado, Florida, Idaho, Illinois, Nebraska, Washington.

[14]Massachusetts, Maine, New Hampshire, Rhode Island.

period than sixty or ninety days.[15] Five states[16] require the court to furnish for record a syllabus of the points adjudicated in each case. A few constitutions use pressure so as to expedite judges in their work. Some of these provide that judges shall not collect their salaries unless they take oath that all controversies finally submitted have been decided.[17] Three states endeavor to define contempt of court.[18] Six states[19] provide that the publication of decisions shall be free, and two provide that the copyright shall belong to the state (Nebraska, South Dakota).

Alabama authorizes judges to exclude the public from the court room in cases of rape, and Georgia must greatly add to the business of its supreme court by declaring that "The costs in the supreme court shall not exceed ten dollars, unless otherwise provided by law." Florida requires that the legislature "appropriate at least $500 each year for the purchase of such books for the supreme court library as the court may direct."

[15]California, Missouri, Utah, Washington.

[16]North Dakota, Oregon, South Carolina, Utah, West Virginia.

[17]For such and similar provisions see California, Georgia, Idaho, Maryland, Montana, Nevada, South Carolina, Utah, Washington.

[18]South Carolina, Arkansas, Louisiana.

[19]California, Missouri, New York, Utah, Washington, Florida.

CHAPTER VII.

ORGANIZATION OF THE LEGISLATIVE DEPARTMENT AND ITS PROCEDURE.

The most important department in our system of government is that of lawmaking. This power at the beginning of our national existence one hundred and thirty years ago was exerted only through legislatures; at the present time the power of making fundamental law has largely passed to the constitutional convention and to the electorate. This latter body, through the referendum, and in some states through the initiative, also shares to some extent the power of making statutes. The relative importance of legislatures is therefore decreasing, not in a few but in all the states, and that, too, in spite of the fact that legislatures are much more democratic than formerly. Under such conditions conventions really have before them a problem well worth considering, viz., shall an attempt be made to enhance the dignity and importance of the legislature so as to make it worthy of the place it theoretically fills in our political system,[1] or, on the other hand, shall the process of minimizing its importance be continued until it becomes an impotent body of small consequence, dragging along a paltry existence, to be finally abolished as useless by some future convention? A powerful executive with ordinance privileges, a convention meeting periodically, and the use of the initiative and referendum as in Oregon, certainly seem to leave no pressing necessity for a legislature. Under present tendencies it must either pass out of use or be reorganized on a scientific basis.

This and the two following articles will contain certain facts obtained from a comparison of our constitutions that may throw some light on this all-important problem.

LEGISLATIVE ORGANIZATION.

Name.—The lawmaking bodies of our states are generally called legislatures, but that in most cases is not the legal name. In twenty-three states it is known as the general assembly, in

[1]See Vermont constitution, Chap. II, sec. 8, "The house . . . shall consist of persons most noted for wisdom and virtue."

seventeen as the legislature, in three as the legislative assembly,[2] and in two as the general court.[3] All the states name the small or upper house the senate, and thirty-seven call the larger body the house of representatives. Four call it the assembly,[4] three, the house of delegates,[5] and one, the general assembly (New Jersey).

Membership.—It is hard to realize that in our state legislatures alone we have nearly seven thousand lawmakers (1,610 in senate and 5,247 in house, or an average for each state of thirty-six senators and one hundred and sixteen representatives). If "in multitude of counsellors there is safety" surely we are safe when our legislatures are in session! If undue size is a political sin, the worst sinners are the New England states, which have in their six lower houses one thousand three hundred and fifty-three members. This is due to their unfortunate emphasis on the importance of the town, once the pride but now the bane of New England politics. The six states,[6] largest in population (over three millions) average forty-one in the senate and one hundred and forty-eight in the house; New York, the largest state, has fifty-one and one hundred and fifty respectively. The twenty-one states having a population between one and three millions average forty in the senate and one hundred and fifteen in the house. If the five small New England states (all but Massachusetts) be excluded from the last set having a population under one million, the remaining thirteen states average twenty-eight in the senate and sixty-three in the House. Of all the legislatures only three senates have a membership of over fifty (Illinois and New York fifty-one, Minnesota sixty-three); three are under twenty (Utah eighteen, Nevada and Delaware seventeen). Five houses have a membership of fifty or under (Delaware thirty-five, Nevada thirty-seven, Utah forty-five, Idaho forty-six and Wyoming fifty); and five houses have a membership of over two hundred (Pennsylvania two hundred and seven, Massachusetts two hundred and forty, Vermont two hundred and forty-six, Connecticut two hundred and fifty-five, and New Hampshire, with its membership of three hundred and ninety-one, out-

[2]North Dakota, Montana, Oregon.
[3]Massachusetts, New Hampshire.
[4]California, Nevada, New York, Wisconsin.
[5]Maryland, Virginia, West Virginia.
[6]New York, Pennsylvania, Illinois, Ohio, Missouri, Texas.

numbers the national house). An average taken of the fifteen constitutions made since 1888 shows the houses to be respectively thirty-four and eighty-nine, which is just the average of the thirty-four states having a population below three millions, barring out as before the five small New England states.

These figures show that the American tendency is to have a senate from one-half to one-third that of the house in membership,[7] that the legislatures of our largest states should not exceed a joint membership of about two hundred; our average states not over one hundred and fifty, and the legislatures of our small states with a population of one million or less should have a membership of from sixty to one hundred. Experience shows that it is on the whole best to fix the numbers definitely in the constitution. If the legislature is given the power, the number of representatives becomes too large. It is far easier in practice to increase than to decrease the number.

Representation.[8]—Three of the New England states have both houses organized on a basis of population similar in practice to that of the other states. The three other states of this section each have one of their houses more or less democratic, but the other house is based on a town system, regardless of population. These states, however, with the exception of Massachusetts, are omitted from the comparisons of this paragraph since they should be studied by themselves.

The prevailing basis of representation in the senate of the forty remaining states is population. Twenty-seven order a reapportionment after every census, based on population, and four based on voting population.[9] The other nine states[10] also base the apportionment on population, but make some modification or exception that may render the senate not quite so democratic in basis as those of the other thirty-one states.

In thirty-six states population, and in four states voting population, is the basis of representation in the house. As this is the larger house twenty-one states provide that each county, or each county having a given fraction of the ratio (one-half to two-thirds),

[7]This ratio is fixed in some states, for example Iowa, Nevada, Utah, Washington, Wyoming.

[8]See also Chapter XI.

[9]Arkansas, Indiana, Massachusetts, Tennessee.

[10]Delaware, Georgia, Maryland, Montana, New York, New Jersey, Pennsylvania, South Carolina, Texas.

shall have at least one member. This produces a degree of inequality in representation that will be considered in a later chapter. Ten of the older states provide in their constitutions a complex ratio for determining representation, but such schemes are not favored in most, or at all in the newer, constitutions. The single-member district is the prevailing form in the states, though there are some exceptions, since the county may be used as a general district for the house and its representatives be elected at large.[11]

Terms.—Twenty-nine states fix on a four-year term for senators and all but six[12] of these provide for arrangement into two classes, one-half retiring every two years. New Jersey elects for three years on a three-class system. Thirteen states[13] elect their senators for two years only, and two for one year (Massachusetts and Rhode Island). For members of the house the term is two years in thirty-eight states, four years in Alabama, Louisiana, Mississippi, and one year in Massachusetts, New York, New Jersey and Rhode Island.

Sessions.—In the "good old times" constitutions used to declare that "The legislature ought frequently to assemble."[14] The states seem not so sure of that now for there are three states that elect their legislatures quadrennially, Louisiana, Alabama, Mississippi, the last two of which have but one regular session during that term. Mississippi, however, provides for a short special session midway in the term, to act on appropriation and revenue bills. All other states hold biennial sessions except Georgia, Massachusetts, New Jersey, New York, Rhode Island, South Carolina which provide for annual meetings. Twenty-three states place no constitutional limitation on the length of the session, but nine[15] of them provide that pay stop entirely or be reduced in amount, at the end of a specified time. The practical effect of this proviso is to reduce the session to the period of full pay. The average session for the fourteen legislatures unlimited in time (averaging the two last sessions), is one hundred fourteen days.

[11]For example, in Illinois, Mississippi, Missouri, North Dakota, Texas.

[12]Alabama, Delaware, Kansas, Louisiana, Mississippi, Virginia.

[13]Connecticut, Georgia, Idaho, Maine, Michigan, Nebraska, New Hampshire, New York, North Carolina, Ohio, South Dakota, Tennessee, Vermont.

[14]See constitutions of Maryland, Massachusetts, South Carolina.

[15]California, Idaho, Kansas, Missouri, North Carolina, Oregon, South Carolina, Tennessee, Texas.

It would be larger, but the pay in three of these states is so small[16] that there is no inducement to protract the session. If all states except these fourteen be considered as having a constitutional time limit we find eighteen setting a sixty-day limit, four a ninety-day, and four a forty-day limit, and five at odd intervals ranging from forty-five to seventy-five days. Four[17] states set a limit but authorize the legislature to extend the same if necessary. Special sessions are regularly authorized and seventeen states set limits to the duration of these, the favored periods being twenty, thirty and forty days.

Salaries.—About one-half of the constitutions specify the per diem of their legislators and invariably get it too low. Once fixed in the constitution it is hard to raise the amount by amendment.[18] Voters seem to delight in voting down all forms of increase in pay. The per diem amount paid is often barely sufficient for expenses at a cheap hotel and must be eked out from other sources of income. Many constitutions fortunately allow legislatures discretion in regard to the amount of pay and in such states a more generous provision is made. The best paid legislators are those of New York and Pennsylvania ($1,500) and Ohio ($1,200.) The lowest are Oregon (three dollars per day for forty days), Maine $150 for the session), and Kansas, Michigan and Vermont at three dollars per day. Mileage is regularly specified in addition, and in a few constitutions (five) an attempt is made to regulate the amount of incidental expenses.[19]

THE PROCEDURE IN BILLS.

Under the legislative department will regularly be found a number of provisions in regulation of the organization and general powers of the legislature. Among these is one authorizing each house to determine the rules of its own procedure. In one respect at least, this power has been taken from the houses. Proper deliberation and an opportunity for free discussion are so important in legislation that the procedure in respect to the passing of bills is now in many of our states regulated by constitution, from the introduction of the bill to its promulgation after passage. This is

[16]Maine, New Hampshire, Vermont.
[17]Arkansas, Georgia, Virginia, West Virginia.
[18]For example Michigan, 1901, Kansas, 1902, Texas, 1906, rejected such amendments.
[19]For example Missouri and Delaware.

one of the most important checks on legislative power yet devised. The contrast between the old and the new in this respect can easily be seen by comparing the ancient constitutions of New England with almost any of those made since 1888, especially the constitutions of Alabama, Kentucky, Louisiana, Mississippi. In three constitutions a separate heading has been set aside for such and kindred regulations of procedure or proceedings.[20] A complete list of such restrictions would practically indicate all the evils that have developed in legislative experience, for, of course, each restriction is aimed at some observed defect or evil in the legislative system.

It is generally provided that no law shall be passed except by bill, and that no new bill shall be introduced within the last few days of the session—three to twenty days—except by consent of a large fraction of the house. Some confine this restriction to appropriation bills. No bill is to embrace more than one subject, which must be plainly expressed in its title, any part not so expressed being null and void. General appropriation bills, and bills for the revision and codification of laws are excepted from this provision. The time honored provision that revenue bills shall originate in the house only, and be subject to amendment in the senate, is required by twenty-one states. The others either expressly authorize either house to introduce any bill or infer it by silence. It is regularly provided that every appropriation outside of general appropriations shall be by special bill. Some (Mississippi for example) add that no appropriation bill shall be passed which does not fix definitely the maximum sum thereby authorized to be drawn from the treasury. In others, New York for example, bills appropriating money for local or private purposes must receive a two-thirds vote of all members elected to both houses, and, again, not less than three-fifths of all members elected shall form a quorum for the consideration of a revenue or appropriation bill. No act can be revised or amended by mere reference to its title, but what is amended must be set forth in full; nor is any amendment to a bill allowed which would change the scope and object of the bill.

In view of the great importance of legislative committees it is strange that so few constitutions attempt to regulate them. The task is apparently too great for conventions. The only provisions

[20]Mississippi, Missouri, Texas.

are the following: Some nine states require that all bills must be referred to a committee. Kentucky adds that whenever a committee fails or refuses to report within a reasonable time, any member may call up the bill. Three states[21] make provision for a joint committee on local and special legislation, which under its instructions ought to be most useful in handling that distressing part of legislation. Five states provide that voting on reports of committees of conference shall be recorded by a yea and nay vote.

Many of the constitutions authorize a demand for a yea or nay vote on any question; the number who may make the demand varies from one member to one-fifth of the membership. It is generally provided that bills must be read three times, but differences arise as to whether these shall be read in full and on three separate days. The last reading is regularly in full and vote on its passage is recorded by yeas and nays. New York forbids amendment at the last reading. Mississippi requires that all votes on final passage shall be subject to one day's reconsideration. It is now a common requirement that bills be printed with all amendments and placed in the hands of members before the final vote.[22] Louisiana authorizes also the printing of minutes each day for the use of members.

A quorum is regularly a majority of all members, and bills pass by a majority of those present, but some require[23] that every bill must receive a majority vote of all members elected, and New Hampshire requires that when less than two-thirds of all members are present, a two-thirds vote is necessary. Kentucky makes the fraction of those present two-fifths.

All bills of course when finally passed must be signed by the presiding officers, but this has become a quite formal occasion; other business is suspended, the bill is read at length and compared, then the chairman signs in open session and sends on the bill to the other house where the same procedure takes place.[24] Eleven constitutions allow any member to make formal protest against a bill and to have the protest entered on the records.[25] Minnesota allows no bill to be passed on the last day of the session. Kentucky, Maine, Mississippi, New York forbid riders on appropriation bills.

[21]Georgia, Mississippi, Virginia.
[22]As illustrations, Missouri, Pennsylvania, New York.
[23]Louisiana, and Delaware for example.
[24]See Alabama, Kentucky, and Missouri, as illustrations.
[25]See Missouri for example.

About one-half of the constitutions define when the laws shall go into effect. The period set varies from forty to ninety days, the last being the favorite. A few prefer to fix a definite date for all bills, as the first day of June or July, this is usually equivalent to a sixty or ninety day limit.[26] As a rule provision is made that a bill may go into effect immediately in case of emergency. It is easy to see that the strict enforcement of the severest of these regulations would prevent much hasty legislation.

[26]See Illinois, Iowa, Maryland, North Dakota.

CHAPTER VIII.

Limitations on the Legislature.

A state has original, not delegated, powers. It can legally do whatsoever it pleases within its own borders, subject only to such regulations and prohibitions as may be found in the national constitution. The legislature, as the representative of the people, may exercise all these vast powers at its discretion. The executive and the judicial departments have no such authority. The power to make law includes the power to regulate, alter, or even abolish these departments. In other words in democracies the legislature is legally omnipotent. The legislatures of our states during the revolutionary period really wielded this immense power, but every generation since that time has witnessed the gradual diminution of it. This process has already in part been outlined; the adoption of the theory of the separation of powers brought about the transfer of certain powers, very slight at first, through the written constitution to the executive and judicial departments; then the right to make fundamental law was transferred to the convention and to the electorate through the referendum; now the power over administration is rapidly passing from the legislature to the executive, and judicial organization and powers are quite fully set by the convention, which leaves to the legislature merely the petty details of judicial regulation.

Legislatures would however still remain the most powerful of the three departments, if their right to make statutes were left untouched, but even this privilege is denied them in part. Attention has already been called to the fact that conventions, wisely or unwisely, place statutes in recent constitutions. A twelve-thousand-word judiciary article in the Louisiana constitution, and a seven-thousand-word article on corporations in the Virginia constitution, show this tendency clearly. In fact every detailed command, prohibition, or regulation in a constitution, is in effect a usurpation of the statute-making power of legislatures, so that, in a sense, the length of a constitution roughly indicates the amount of limitation placed on legislatures.

In addition to this loss of power, the electorate also, working

through the convention, has taken from the legislature large powers in the making of statutes. The climax of this tendency is seen in the Oregon amendment of 1902, already referred to, which reads, "The legislative authority of the state shall be vested in a legislative assembly, . . . but the people reserve to themselves power to propose laws and amendments to the constitution, and to enact or reject the same at the polls, independent of the legislative assembly, and also reserve power at their own option to approve or reject at the polls any act of the legislative assembly. The first power reserved by the people is the initiative. . . .The second power is the referendum." The amendment later provides that the style of all bills shall be: "Be it enacted by the people of the State of Oregon" (formerly "by the Legislative Assembly)." This amendment applies to the constitution as well as to statutes. Two other states have authorized the initiative and the referendum, but apply these principles to statutory legislation only, South Dakota, 1898, Utah, 1900.[1]

In ways equally effective, though not so spectacular, the people through the convention have placed in the constitutions requirements that certain kinds of general laws shall be referred to the electorate for final approval or rejection.[2] Space will not allow a full discussion of this subject, but in brief it may be said that in many states referenda must be ordered in the case of general statutes that involve an increase of state debt above a fixed maximum, an increase in the tax rate when fixed by constitution; or the location of a state capital or important state institution, such as a university or a penitentiary. In statutory local legislation referendum requirements are entirely too numerous to specify. Practically all the states use the referendum more or less in matters affecting counties, towns and cities, or on such questions as the licensing of saloons or an increase in local debt for special expenditures.

Special Legislation.—Such restrictions have largely reduced the importance of legislatures in the making of general statutes. These bodies find some consolation, however, if only they are

[1]Initiative and referendum amendments, after passing the legislatures of Massachusetts, Nevada, and Missouri, were rejected by the next legislatures, in the first two states, 1904, 1905, and by the people in Missouri, 1904.

[2]By judicial interpretation referenda on general statutes must be authorized by the constitution.

allowed to pass at pleasure special, local or private legislation. Through such measures friends are won, interests placated, and constituencies made secure. An attack upon this privilege seems to add insult to injury; forbid the privilege and the chief delights of legislative existence pass away. But what are the facts in the case?

Alabama in 1901, in a session of one hundred and thirteen days, under its old constitution, which had few restrictions on special legislation, passed 1,132 laws,[3] only ninety of which were general. In 1904, in two sessions of eighty days, under the new constitution, which contains many restrictions, 803 laws were passed, 179 of which were general. Virginia in a ninety-one day session, 1901–2, under its old constitution, passed 694 laws, eighty-seven of which were general. In 1902–4, under its new constitution, during several sessions lasting two hundred and sixty-seven days, it passed 608 laws, 317 of which were general. In its regular session of sixty-two days, in 1904, it passed 262 laws, 135 of which were general. These illustrations show the effect of restrictions.

Most state legislatures meet in the odd years. In 1901 those that met passed 13,854 laws, 5,318 of which were general. In 1903 14,098 laws were passed, 5,198 of which were general. In 1905, 13,172 laws were passed and 5,608 were general. If the legislation of all the states during the last legislative period (1904–1905) be considered, 18,937 laws were passed, 8,362 of which were general. During that same period the New England states, whose legislatures are almost unrestricted, passed 3,877 laws, of which 1,162 were general. Six states[4] whose legislatures are fully restricted, passed 1,558 laws, 1,127 of which were general. In other words New England special legislation was seventy per cent of the whole and that of the other six states but twenty-eight per cent of the whole.

To sum up, it may be assumed that, roughly speaking, unrestrained legislation will be seven-tenths special, fully restrained legislation three-tenths special, or if the average of all legislation for the last five years be taken, it may be safely asserted that three-fifths of our state legislation is special, private or local.[5] Under

[3] In this paragraph the term laws includes resolutions also, but the proportion of these is very small.

[4] California, Idaho, Illinois, North Dakota, South Dakota, Utah.

[5] The basis for these totals is obtained from the excellent Summaries of Legislation issued by the New York State Library.

such conditions general legislation can not secure the attention it deserves. Really capable men, wearied by numerous demands on their time and patience in the consideration of relatively unimportant matters, drop out of our legislatures and yield place to small men, big with the sense of their own importance, who delight in special legislation as a means to enable them to hold a position for which they are entirely unfit. Add to this the waste of money through needlessly protracted sessions, and undue multiplication of law, and it is easy to see that conventions have a problem on their hands in devising a remedy for one of the greatest of our political evils.

It now becomes possible to ask what remedies have been devised to check this evil. The most obvious remedy is to forbid special legislation. It is interesting to study the old-fashioned constitutions of New England, almost void of restrictions, then to take up the next older set, and see restrictions creeping in one by one, the more numerous as you go westward, where democracy is more vigorous, and at last to see in the recent constitutions long lists of restrictions, finally as many as thirty-five, each forbidding some particular kind of local, special, or private legislation. To make assurance doubly sure the new Alabama constitution carefully defines terms:

"A general law within the meaning of this article is a law which applies to the whole state; a local law is a law which applies to any political subdivision or subdivisions of the state less than the whole; a special or private law within the meaning of this article is one which applies to an individual, association or corporation."

The trouble with this remedy is that it may go too far. Our governors in their messages already complain of an increase of statutes, general in their nature but really special in their application. Special legislation must be had at times, and there should be ways of getting it without subterfuge. Let there be restrictions by all means, but allow some discretion on occasions.

The device of a special committee on local legislation, already referred to as authorized in Georgia, Mississippi and Virginia, is excellent in design but in practice seems not to work well, if one may judge from the amount of special legislation still issued by the legislatures of those states. Such committees should be impartial

and judicial in the exercise of their work, like similar committees of the British House of Commons, where the handling of special legislation is a fine art.

Another device found in several constitutions[6] and in the statutes of some others (Vermont for example), is to require that no local or special bill shall be passed, unless notice of the intention to apply for such legislation shall have been published in the locality at least thirty (or sixty) days before the bill is introduced. This is a most excellent plan if properly performed. If, however, the notice is published once, in fine type, in an obscure corner of an obscure paper, little will be accomplished by the requirement.

A much more promising remedy, imitated from the excellent English system of supervision over local government, and now partly in use in many states, under legislative authority, is to authorize by general statute the several departments of administration to apply the principles of such statute to special cases as they arise. For example, the auditor may settle claims for tax rebates, the land commissioner many points in titles, the secretary of state issue charters, and the courts, like the federal court of claims, pass on disputed accounts. We have now in many of our states boards of equalization. Such a board might have its powers enlarged so as to pass on very many requests from localities for special legislation. The English Local Government Board, which performs such a service for counties, towns, and cities, is, perhaps, the most successful device in British national administration. This movement is hard to follow from constitutions, because the statutory power of legislatures is ordinarily sufficient for action, but there is a strong trend in this direction throughout the country, and, if supplemented by thorough executive oversight, and civil service rules, should prove the ultimate remedy for the evils of special legislation. That at least is the conclusion of the best governed of the European states[7] which do not suffer, as the United States does, from such a perversion of lawmaking.

[6]Arkansas, Florida, Georgia, Louisiana, Missouri, North Carolina, Pennsylvania, Texas.
[7]Great Britain, Germany, France.

CHAPTER IX.

Constitutional Regulation of Important Interests.

It is said that Americans are prone to assert dogmatically their opinions on all subjects of which they are ignorant, and to be diffident in matters with which they are fully conversant. The point of this saying can be appreciated by one who seeks to ascertain how conventions regulate important interests. Most of these interests are in process of rapid development, for, through the multiplication of machinery and wider knowledge, the conditions of life change with wonderful suddenness, as compared with the slow changes of earlier centuries. Yet conventions dogmatically fix in the fundamental law provisions that must be largely superseded in a very few years. Virginia's article on corporations for instance, placed in a constitution that can be amended only with great difficulty, and Louisiana's judiciary department, no matter how excellent they may be, yet will surely need frequent amendment. For such reasons the work of conventions in respect to the topic now under discussion is the least satisfactory of all their labors. An old debater once advised a beginner, "When you don't know what else to say, discuss general principles." Our conventions should follow this advice, and refrain from rushing in "where angels fear to tread."

There are few specialists, if any, who would with alacrity undertake to write out for a state constitution a detailed system of taxation, of finance, or education; of regulation for corporations, common carriers, or banks; or to define a policy toward labor, or state ownership of monopolies, or control over mining interests. All such matters must of course receive most careful attention from conventions, but the question is rather whether such attention should not confine itself chiefly to the formulation of general principles, to a tentative outline for a system of regulation, with some discretionary power left in the legislature, and then to pay much more attention to methods whereby a higher grade of officials and legislators may be secured. If, for illustration, the membership of our legislatures were cut in half, and the pay of the remaining half doubled; if our numerous departments, commissions, and

boards were consolidated and unified, and salaries of heads trebled; real economy would result, and efficiency be greatly increased. Lastly, conventions should recognize that much of their work is at the best transitory, and hence that the method of amendment should be comparatively simple. An unchangeable constitution in these days is an insult to the spirit of a progressive democracy.

After this preface, the question may now be asked, what points in our constitutions seem on the whole most general in respect to important interests.

Local Bodies Politic.—It seems plain from the constitutions. that the town system of New England is dead. It is not imitated *per se* outside of that section, and within that section is in a state of *noxious desuetude.* The real unit in the United States is the county, in thinly settled states cut up into administrative districts. which gradually become townships as population multiplies. These townships remain integral parts of the county, are supervised, and yet have a large share of local autonomy. The urban center has two distinct organizations, the village and the large city. There is first the village, borough, town, or city, organized under general law in almost all the states, and having a small compact population under a simple form of government. Lastly comes the incorporated city of large size, either organized by special charter, or in classes by general law, or authorized by constitution to form their own charters, subject to the constitution and general statutes of the states.[1]

Corporations.—In general the points worthy of notice in constitutions respecting corporations of all sorts are as follows: First, a distinction is made between corporations organized for profit, and those for other purposes; these last may be exempted from taxation, if religious, educational, or eleemosynary in character. Second, a distinction is made between domestic and foreign[2] corporations, and this last class regulated so as to secure investors and the payment of suitable fees or taxes. In respect to corporations organized for profit, constitutions regulate their relations to the state and seek to secure the interests of their stockholders.

[1]For home charter cities, see the constitutions (amended) of California, Minnesota, Missouri, Oregon and Washington. Illinois, in 1904, passed an amendment authorizing the legislature to pass special laws for Chicago, but subject to referendum. The franchise rights of cities are protected in about one-half the constitutions (see South Carolina as example).

[2]Those not chartered by the state itself.

They provide that corporations be chartered by general or special law, that their charters be subject to amendment or revocation, that those already organized must file acceptance of constitutional provisions if they desire to have the benefit of future legislation, and that they be subject to general regulation. This regulation may be loose and allow large freedom, or may be strict or paternal in character. It may include regulations of capital stock and its issuance, periodic reports to a state commission having powers of supervision and regulation, and publicity of conditions. In addition there may be prohibitions of pools, monopolies, and trusts, regulation of the exercise of the power of eminent domain, aiming to secure the rights of those whose property is taken; and prohibitions against the lending of public credit by a state or locality to any private enterprise. Some states[3] forbid corporations to hold real estate out of use after a fixed period of years (five to ten). Illustrations of the above provisions may be found in most of the western and newer southern constitutions, notably Kentucky, Louisiana, Alabama and Virginia. The article on corporations in this last constitution is a really excellent production, well worthy of study. The articles in the constitutions of Alabama and South Dakota on banks are typical of the usual provisions on that subject. Texas, which heretofore has forbidden the incorporation of banks, in 1904 authorized such incorporation under certain restrictions.

Taxation and Finance.—There are wide differences in respect to these matters in the constitutions, but a tendency in certain directions is clear. Details must be sought in statutory legislation. Taxes must be uniform, levied and collected under general laws, and for public purposes only. A maximum tax rate is fixed, varying with the valuation of the state, and a maximum debt for state and locality, beyond which amount the referendum must be used. The maximum may be fixed by a per cent of the assessed valuation instead of a specific amount. Some authorize an income tax, others an inheritance tax (over half the states now use this form of tax) and still others franchise taxes and a tax on the capital stock of corporations; a radical amendment of this sort was added to Minnesota's constitution in 1896. These special forms of taxation illustrate a strong tendency to seek for the state sources of income apart from those used by localities. State and municipal bonds

[3]California, Louisiana, Michigan, Missouri, for example.

are regularly exempted from taxation, and provision may be made allowing to new industries exemption for a term of years (Mississippi for example), or there may be a contrary provision forbidding such exemption. Georgia lengthily defines the state's sovereign right in taxation.

The system of assessment is justly receiving more attention than formerly, but is a troublesome question and much is properly left to the discretion of legislatures. The chief provisions are, state and county boards of equalization, and in a few states (Louisiana for example) a special board to assess franchise corporations.

In finance careful provisions in respect to bonded indebtedness and sinking funds are characteristic features. The safe investment of funds is a vexed question. Two states at least[4] allow investment of school funds in land mortgages. Prohibitions are common against the receiving by treasurers of profits from the loan of funds in their hands. Our states are mostly in excellent financial condition and this is largely due, in the case of the newer states at least, to the wise pay-as-you-go policy enjoined by constitutions. Attention has already been called to the governor's control over finance. Virginia in its new constitution tries an interesting experiment in providing for a standing auditing committee made up of five members of the general assembly. This committee is to have powers of inspection over all officers who handle state funds, may sit after adjournment, and reports to the governor.

Provisions in regard to state ownership of franchises or natural monopolies are not common. New York provides that its famous canal system shall forever remain the property of the state, and in another section makes the same provision for its wild forest lands. Utah has a better worded article on forestry. Nebraska reserves ownership in its salt springs. The western mining and irrigating states now have many provisions in regard to the use of the waters of the state, Wyoming and North Dakota making the waters "the property of the state." Many of the states bordering on the sea and on navigable rivers have articles on tide lands and riparian rights, and declare their policy in regard to the use of the waters.[5] North Dakota provides that "the coal lands, including lignite, of the state shall never be sold, but may be leased." States seem not yet

[4]Idaho and South Dakota. Missouri allows county school funds to be so invested. Washington by amendment 1894 forbids loans of school funds to private persons or corporations.

[5]See for example, Washington, South Carolina, Louisiana, Mississippi.

to have a clear policy in regard to public lands, whether to sell them in severalty or to retain ownership and lease the lands. Wisconsin and South Carolina both declare that the people "possess the ultimate property in and to all lands within the jurisdiction of the state."

Education.—The articles on education found in the constitutions vary from the simple paragraph of early constitutions to lengthy provisions sometimes several pages in length. This, however, is largely due to the necessity of arranging for the disposition of the school lands so generously voted to the states by congress. These lands are generally placed under the charge of a land commissioner or board, and provisions are made for the holding or disposing of lands and the investment of school funds. Special attention is paid to the safety and proper investment of these funds, and several states[6] provide that losses through neglect or dishonesty must be made up from other funds. About two-thirds of the constitutions now forbid school funds to be used in aid of sectarian or denominational schools. Many have done this under instructions in enabling acts, and others of their own accord.

Provision is generally made for a state superintendent, a board of education, and similar officials in the counties. Attention also is given to the organization of the higher institutions of learning. Localities are permitted to add to the school funds by special tax, and cities to maintain and control their schools apart from the county system. There are many differences in respect to the length of the term, to compulsory features, to matters of text books, and to the organization of separate schools for white and colored.

Labor.—The growing interest in labor questions begins to find expression in the constitutions. Bureaus for the study and preparation of labor or industrial statistics are common. So are courts or boards of arbitration. The eight-hour day for all public work is fixed in four constitutions,[7] and two require that citizens of the United States only shall be employed on public works. The right of recovering damages for injury is safeguarded,[8] the "fellow-servant" doctrine modified, and contracts declared null and void

[6]For example Iowa, Nebraska, North Dakota, South Dakota.

[7]California, Idaho, Montana, Utah. Colorado, in 1902, by amendment, made eight hours a day's labor in mines.

[8]For example, Arkansas, Colorado. Kentucky, Mississippi, Montana, Pennsylvania, Virginia, Wyoming.

which exempt employers from liability. Convict labor is regulated so as not to compete with other forms (New York for instance), and boys under fourteen (or twelve) are forbidden to work in mines. Montana wisely made the age sixteen by amendment, 1904. Wyoming forbids the employment of girls or women in mines at all. Prohibitions against blacklists and Pinkerton detectives are among the curiosities of this section.

Miscellaneous.—In view of the unfortunate political conditions existing in many states most of the constitutions contain more or less elaborate provisions against bribery, and corruption.[9] This involves much taking of oaths; officials, even legislators, must take oath that they have not attained their election by improper means; governors, not to exert improper influence on legislators.[10] Free passes are now forbidden by constitution in at least thirteen states;[11] log rolling,[12] lobbying, betting at elections, intimidations of electors by employers, and sharing in contracts while in office, are all prohibited in one or more of the constitutions. Dueling, though well nigh obsolete, is forbidden in about two-thirds of the states, and in most is a disqualification for office. Four states require the duel oath; Texas combines it with the bribery oath. Mississippi requires each legislator to swear to read the constitution, or to have it read to him, presumably if illiterate!

About half of the constitutions now secure married women in their right to separate estates. This provision is often found under homestead exemption, for which in some form or other provisions are also common. The newer constitutions pay much incidental attention to matters of social morals, such as the prohibition of lotteries,[13] regulation of intemperance, provisions for local option, and authorization of penal reforms. South Carolina prohibits prize fighting, gambling or betting (for officials) and has a unique provision against lynching. There is a rather general provision for institutions of charity, and for state boards of charity and correction, either with powers of visitation and recommendation, or of control.

[9]See Alabama, Delaware, Kentucky and New York as illustrations.

[10]Nine states require bribery oaths.

[11]Alabama, Arkansas, California, Florida, Idaho, Kentucky, Louisiana, Maine, Mississippi, New York, South Dakota, Washington and Wisconsin.

[12]The exchange of votes by legislators.

[13]This is found in about thirty-five constitutions.

Up to 1898 four states[14] had codified their written and unwritten law.[15] Codifications of statutory law are, of course, much more common. Five states[16] by constitution authorize their preparation. Michigan orders a compilation only. There are provisions for the codification of procedure in four states[17] and the constitutions of Mississippi and Kentucky each provide for a commission of expert lawyers to prepare such general laws as are necessary to put the new constitution into effect.

[14]Georgia, California, North Dakota, South Dakota.
[15]27 Am. Law Review, 552.
[16]Indiana, Louisiana, Missouri, South Carolina, Texas.
[17]Indiana, Louisiana, Ohio, South Carolina.

CHAPTER X.

Religious Provisions of the State Constitutions.

The principle of religious liberty is one of the most striking features of American democracy. Foreign students of our institutions regularly manifest deep surprise at the practical workings of the theory of the separation of church and state. Chapter CVI for instance of Bryce's American Commonwealth illustrates this attitude of mind. Our national constitution took advanced ground when it forbade congress to establish religion or to prohibit its free exercise, and recognized no religious test as a qualification for office or public trust.[1] Some of our states even yet have not advanced so far. There are still survivals in the constitutions of that earlier, more intolerant spirit which now seems so strangely out of place. The religious provisions of our state constitutions may roughly be divided into two classes: (1) those aiming to establish religious freedom; and (2) those involving some recognition of religion. A statement of each of these in turn may present some interesting features.

1. All forty-five constitutions in plain terms provide for freedom of worship but vary considerably in methods of expression. Michigan, for example, states that "The legislature shall pass no law to prevent any person from worshiping Almighty God according to the dictates of his own conscience;" North Dakota, by contrast, provides that "The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall be forever guaranteed in this state." Utah, after a similar provision, adds, emphatically, "There shall be no union of church and state, nor shall any church dominate the state or interfere with its functions." Other constitutions again, like those of Massachusetts, Rhode Island, and New Hampshire, have lengthy provisions, the last named state employing two hundred and seventy-three words for Article VI of its Bill of Rights. The additional matter as a rule amplifies the principle in detail by specifying that no preference shall be given by law to religious societies; that no person shall be compelled against his will to contribute toward their support,

[1]Amendment I and last clause Article VI.

nor to attend services; that all persons shall be free to profess and maintain by argument his religious beliefs; and that every religious denomination shall be protected in the peaceable enjoyment of its own mode of worship. Rhode Island has an eighty word *whereas*, as preface to its provision, and states therein its historic argument for religious liberty. Nineteen constitutions however, are careful to say in varying phraseology that liberty of conscience shall not be construed so as to excuse acts of licentiousness, nor justify practices inconsistent with the peace and safety of the state. Many provide that liberty of conscience shall not be construed to dispense with oaths or affirmations, and Idaho, Montana, and Utah expressly except polygamous marriage from a guaranty of religious freedom.

The constitutions generally provide that no limitations shall be placed on an individual's rights because of his religious beliefs. Seven states for example prohibit the denial on such grounds of civil rights; eight other states put it "No civil or political rights shall be denied;" and twenty-one states declare that no religious test shall be required as a qualification for any office or public trust. Four states[2] specify that no religious test shall ever be required as a qualification for voting. In judicial matters nine states forbid any religious test as a qualification for jurors, and twenty states safeguard witnesses in the same way. Oregon and Washington add to these provisions, "nor be questioned in any court of justice touching his religious belief, to affect the weight of his testimony." On the other hand two constitutions, insert a provision inherited from the political theories of Cromwell's time.[3] Maryland bluntly provides that "No minister or preacher of the gospel, or of any religious creed or denomination, shall be eligible as senator or delegate." Tennessee is far more courteous in its similar provision. "Whereas, ministers of the gospel are, by their profession, dedicated to God and the care of souls, and ought not to be diverted from the great duties of their functions; therefore, no minister of the gospel or priest of any denomination whatever, shall be eligible to a seat in either house of the legislature."

Freedom of conscience is also safeguarded by exempting from military duty those who are conscientiously opposed to war. Twenty-three states have provisions of this sort, varying from the

[2]Kansas, Minnesota, Utah, West Virginia.
[3]For example, Harrington's Oceana.

quaint phraseology of Maine, "Persons of the denominations of Quakers and Shakers, . . . and ministers of the gospel may be exempted from military duty," to the businesslike statement of Washington. "No person or persons having conscientious scruples against bearing arms shall be compelled to do military duty in time of peace: Provided, such person or persons shall pay an equivalent for such exemption."

Some of our states by experience have found out that religious sects can be indirectly supported from public funds by grants to religious philanthropic institutions, especially hospitals and orphan asylums. Twenty-three states recognize the danger of this policy and forbid in more or less vigorous terms such grants. A typical provision of this sort (Michigan) reads: "No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary, nor shall property belonging to the state be appropriated for any such purpose." Montana has a still stronger prohibition; "No appropriation shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation or community not under the absolute control of the state, nor to any denominational or sectarian institution or association." Lengthy provisions of a similar nature, but with certain provisos, may be found in California, Article IV, sections 22 and 30; Louisiana, Article 53, and Virginia, section 67. A kindred provision forbidding aid to sectarian educational institutions may be found in twenty-nine constitutions. Article 253 of the Louisiana constitution contains this provision in simple form, "No funds raised for the support of the public schools of the state shall be appropriated to or used for the support of any private or sectarian schools." A safer and far more emphatic form may be seen in Utah's constitution, Article X, section 13: "Neither the legislature nor any county, city, town, school district or other public corporation, shall make any appropriation to aid in the support of any school, seminary, academy, college, university, or other institution, controlled in whole, or in part by any church, sect, or denomination whatever." This provision is in eight constitutions enlarged by an injunction against the teaching of sectarian doctrines: Wyoming says, "nor shall any sectarian tenets or doctrines be taught or favored in any public school or institution that may be established under this constitu-

tion;" Wisconsin expressly mentions its university, and California also desires its university to be kept "entirely independent of all sectarian influence." Nebraska and South Dakota unite in a provision which in the constitution of the last named state reads as follows: "Nor shall the state, or any county or municipality within the state, accept any grant, conveyance, gift or bequest of lands, money or other property to be used for sectarian purposes." The five mining states,[4] curiously enough substantially agree in providing that, "No religious test or qualification shall ever be required of any person as a condition of admission into any public educational institution of this state, either as teacher or student; and no teacher or student of any such institution shall ever be required to attend, or participate in, any religious service whatever (Colorado, IX, 8). Kentucky has it in the form, "nor shall any man be compelled to send his child to any school to which he may be conscientiously opposed." Mississippi, however, in providing for religious liberty expressly says that, "The rights hereby secured shall not be construed to exclude the Holy Bible from use in any public school of this state." Perhaps, however, the most curious of this series of prohibitions is found in the constitutions of Michigan and Oregon, which provide that no money shall be appropriated for the payment of any religious services in either house of the legislature. The odd part of the Michigan provision is that in the same paragraph forbidding religious services for the legislature it authorizes the employment of a chaplain for the state prison; apparently its inmates were considered more susceptible to religious influences.

Unless there be a prohibition in the constitution a legislature under its general lawmaking powers may exempt property used for religious purposes from taxation. For this reason most constitutions are silent in respect to such exemptions. Eleven states, however, expressly authorize their legislatures to exempt such property. A few states have some curious provisions in regard to this matter. Virginia and West Virginia agree in forbidding a charter of incorporation to any church or religious denomination, but authorize the assemblies to secure the title to church property so as to hold it for designated purposes. Missouri allows religious corporations to be established under general law but only for the

[4]Colorado, Idaho, Montana, Wyoming, Utah.

purpose of holding title to not over five acres of land (one acre within a city) and buildings thereon, if used for religious purposes. Maryland in a lengthy article in its bill of rights (Article 38) forbids every gift, sale or devise for religious purposes without the prior or subsequent sanction of the legislature, but excepts from this provision land not exceeding five acres and its buildings. Mississippi goes farthest of all in prohibiting every devise, legacy, gift or bequest to a religious body or corporation, and authorizes the heir-at-law to take such property "as though no testamentary disposition had been made." As a final illustration of the regulation of property used for religious purposes, we find Kansas anticipating modern French policy by providing that, "The title to all property of religious corporations shall vest in trustees, whose election shall be by the members of such corporations."

II. The provisions in constitutions that involve some recognition of religion are simple and comparatively few in number. The most important of these is a formal acknowledgment of the goodness of God. Thirty-nine constitutions place in their preambles this recognition; three, having no preamble, omit it (West Virginia, New Hamphire, Vermont); and three make no reference to God in their preambles (Michigan, Tennessee, Oregon). In twenty-nine preambles the term Almighty God is used; three use the term God; and three, Supreme Ruler of the Universe. The following terms each occur once only: Creator, Supreme Being, Sovereign Ruler of the Universe, Sovereign Ruler of Nations, and Great Legislator of the Universe. The most common form is a simple acknowledgment of gratitude for the enjoyment of rights and liberty (twenty constitutions); twelve others add to that an invocation or a statement of reliance on Him for blessings and guidance; four use the invocation or statement of reliance only, two use the phrase, "with profound reverence for the Supreme Ruler of the Universe," and Delaware ascribes to Divine Goodness the fact that "all men have by nature the rights of worshiping and serving their Creator according to the dictates of their consciences." The following quotations illustrate the usual phraseology: "Grateful to Almighty God for our freedom;" "Grateful to Almighty God, and invoking his blessing on our work;" "Grateful to Almighty God and humbly invoking His guidance;" "Humbly invoking the blessings of Almighty God."

Three constitutions,[5] in their bills of rights quote from the Declaration of Independence, asserting that men are free and equal and endowed by their *Creator* with certain inalienable rights. Similiar provisions in other constitutions omit the word Creator.

All of the forty-five constitutions provide that the officers of the state take oath or affirmation on entering office and as a rule give the oath or affirmation verbatim. In eighteen constitutions the oath ends with the sentence "So help me God" (Vermont and Connecticut use the second person). Seven of these substitute, in case of an affirmation, the phrase "under the pains and penalties of perjury." Four constitutions also provide for an oath or affirmation at registration, or if challenged when voting.

Among the most curious survivals of religious intolerance are those found in eight constitutions regarding qualifications for office. Both Arkansas and Mississippi expressly state that no religious test shall be required as a qualification for office; yet in later articles provide that no person who denies the existence of God shall hold any office; and Arkansas adds, "nor be competent to testify as a witness in any court." Maryland, North Carolina, South Carolina, and Texas likewise refuse office under similar conditions, but Maryland also adds that a witness or juror must believe "in the existence of God, and that under His dispensation such person will be held morally accountable for his acts, and be rewarded or punished therefor in this world or the world to come." Pennsylvania and Tennessee, however, go still farther by requiring as a qualification for any office a belief in the being of God and in a future state of rewards and punishments. This provision of Tennessee's constitution must be a lineal descendant of a provision of the constitution submitted by the Rev. Samuel Houston in 1785 for the State of Frankland (Tennessee). It read as follows:

No person shall be eligible or capable to serve in any office of this state who denies any of the following propositions, viz.: (1) That there is one living and true God, the Creator and Governor of the Universe. (2) That there is a future state of rewards and punishments. (3) That the scriptures of the Old and New Testaments are given by divine inspiration. (4) That there are three divine persons in the Godhead, coequal and coessential.

This constitution fortunately, was not accepted by the convention.

[5]Alabama, Indiana, North Carolina.

Miscellaneous Provisions.—The constitution of Virginia is the only one to mention the Young Men's Christian Association (section 183), Mississippi authorizes religious worship for convicts (section 225), and, along with South Carolina, allows ministers of the gospel to register and vote after a shorter time requirement than other classes of persons. There are no longer any religious restrictions on the exercise of suffrage. North Carolina recognizes that, "provision for the poor, the unfortunate, and orphan, is one of the first duties of a civilized and Christian state," and Tennessee provides that "No person shall in time of peace be required to perform any service to the public on any day set apart by his religion as a day of rest." Delaware asserts that "it is the duty of all men frequently to assemble together for the public worship of Almighty God; and piety and morality, on which the prosperity of communities depends, are thereby promoted." Vermont goes still farther in saying that "every sect or denomination of Christians ought to observe the Sabbath or Lord's Day, and keep up some sort of religious worship, which to them shall seem most agreeable to the revealed will of God." It also orders its legislature to encourage societies organized for the advancement of religion. Massachusetts in its eleventh amendment asserts that "the public worship of God and instructions in piety, religion, and morality, promote the happiness and prosperity of a people and the security of a republican government." In Chapter V also it declares that "our wise and pious ancestors . . . laid the foundation of Harvard College, in which university many persons of great eminence have, by the blessing of God, been . . . qualified for public employments, both in church and state;" and adds that "the encouragement of arts and sciences, and all good literature, tends to the honor of God and the advantage of the Christian religion." Notwithstanding the recommendations of its last two constitutional conventions, New Hampshire still retains its Puritanic article on Evangelical Protestantism. The first sentence reads as follows: "As morality and piety, rightly grounded on evangelical principles, will give the best and greatest security to government, and will lay in the hearts of men the strongest obligations to due subjection, and as the knowledge of these is most likely to be propagated through a society by the institution of the public worship of the Deity and of public instruction in morality and religion, therefore,

to promote these important purposes, the people of this state have a right to empower, and do hereby fully empower, the legislature to authorize, from time to time, the several towns, parishes, bodies corporate, or religious societies within this state to make adequate provision, at their own expense, for the support and maintenance of public Protestant teachers of piety, religion, and morality."

As the foregoing paragraphs include all the religious provisions of American constitutions now in force, our constitutional attitude toward religion is plainly manifest. Freedom of conscience is fully guarantied, and the few intolerant limitations on rights are in fact probably obsolete. Whatever power religion has in the United States over the lives of men is due to its inherent strength, not to a support derived from the state.

CHAPTER XI.

Popular Representation in State Legislatures.

The famous Northwest Ordinance of 1787, in article second of its compact, declares that, "The inhabitants of the said territory shall always be entitled to the benefits of . . . a proportionate representation of the people in the legislature." This principle of popular representation may now be looked on as a settled American policy and departures from it as exceptions to the general rule. In our state constitutions this principle is embodied in the command that representation in both legislative houses shall be based on population, and a readjustment made decennially, after the taking of either national or state census. Legislatures, to be sure, in carrying out this injunction, may be to some extent unfair in their apportionments, but that is a matter of discretion and expediency, the remedy for which should, in case of gross inequalities, lie in the courts.

While, however, the principle of equal representation is embodied in our state constitutional system, there are exceptions, and some of these are serious departures from the principle. In a few states at least a system of representative democracy does not exist, but rather a form of oligarchy. These modifications are generally survivals from an earlier but antiquated system, retained for partisan purposes; or they may be intended as a sort of guaranty for the minority as against a powerful majority. In form they are constitutional provisions aiming to secure representation to districts, county or town, irrespective of population; or, on the other hand, to place limitations on city representation as against the representation of the rural population. These provisions are fourfold: there are (1) provisions that each town or county have one or more members; (2) that no city or county have more than a fixed number or fraction; (3) a complex ratio is specified which in effect may discriminate against some in favor of other localities;[1] and (4) the districts are themselves fixed by constitution and limitations placed on legislative power to alter these.

[1]For ratio provisions see constitutions of Iowa, Maine, Maryland, Missouri, North Carolina, New Hampshire, New York, Ohio, Pennsylvania and West Virginia.

This chapter aims to present in detail the systems of representation in our several state legislatures, from the standpoint of equal popular representation. As a common basis for this study the federal census of 1900 will be used,[2] the county taken as the unit of representation, and an apportionment be considered as equal when the population of a district ranges anywhere from a half ratio to a ratio and a half. In a few constitutions a different fraction of a ratio may be fixed (two-thirds for instance); or the population taken into account may be the voting population, or the census population less aliens; but these local differences will be disregarded for the sake of uniformity. In New England the town is so obviously the unit that the comparison will be made from both units, town and county.

I. In sixteen of the states the constitutions provide for apportionment in both houses on the basis of population, a reapportionment after each census, and place no restrictions on this basis. These states therefore are broadly democratic in this respect. The list,[3] it will be noted, includes states from all sections of the United States.

II. In eighteen states, while the census population is made the basis, there are certain limitations on the representation in one, or it may be in both houses, that modify somewhat the principle. These, though on the whole unimportant, should yet be explained in detail:

Alabama. The constitution provides that each county shall have at least one member in the house. There are sixty-six counties in the state but each of these has a population at least over one-half of the ratio. There are therefore no limitations in fact.

Arkansas has the same provision, but though there are seventy-five counties, each has at least one-half the ratio.

Florida provides that each county have at least one in the house, and no county more than three. Of its forty-five counties four have less than one-half the ratio and hence are over-represented. The four largest counties limited by constitution to three

[2]But in New York the state census of 1905.

[3]California, Colorado, Illinois, Indiana, Kentucky, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Tennessee, Washington and Wisconsin.

each, are entitled by population to eighteen members and hence are under-represented.

Idaho requires that at least one member be assigned in the house to each county, but of its twenty-one counties none has less than one-half the ratio.

Iowa requires that each county have at least one in the house, and provides a ratio which discriminates against the thickly settled counties. Of its ninety-nine counties fifty-eight are below the population ratio, three of these are below the one-half ratio, and of its larger counties thirteen, to which are assigned twenty-two members, should have by population thirty-three members. This state illustrates the fact that if the constitution fixes the number of members, over-representation on one side involves under-representation on the other.

Louisiana in its constitution of 1898 assigned membership to both houses by districts designated, but provided for a reapportionment in 1902 on the basis of the federal census, but with the stipulation that each parish (county) and each ward of New Orleans should have at least one member. The assembly reapportioned the state July 8, 1902. Under the condition set there are twelve parishes below the ratio but above one-half, and three parishes whose populations fall below one-half the ratio. As these have a member a piece, four other parishes in consequence have to lose one each from their proper quota. The city of New Orleans however, has its full proportion of twenty-four members.

Mississippi also defines by constitution its districts for both houses and provides for reapportionment after each federal census, but with the proviso that each county shall have at least one member in the house. In the last legislative apportionment one county only falls below the half ratio, though ten districts are assigned one each in excess of their *pro rata*, and ten districts correspondingly lose one each. This, however, is within legislative discretion and is not due to constitutional requirement.

Montana provides that each county shall have one member only in the Senate. Of its twenty-four counties in 1900 (there are twenty-six now) six were below one-half of the ratio and four counties, which by population were entitled to twelve members, had but four. As Montana in area is the third largest state in the Union, it is easy to see through multiplication of new counties

the possible development of a "rotten borough" system within a generation or two, unless this condition should be stricken from the constitution.

New York[4] in article III, section 4, of its constitution places many restrictions about the apportionment of its senators, and in effect modifies somewhat the principle of popular representation in this body. The difference, however, is slight. District two, which is assigned one, is by population entitled to two. Kings county, which has eight, should have nine, and New York county is entitled to fifteen but has twelve. Provision is made that no county shall have more than one-third of all the senators, and no two adjoining counties more than one-half, but these maxima do not as yet apply to New York and Kings counties.

Section 5 provides a ratio and other regulations for the apportionment of assemblymen. Among these provisions is found the familiar requirement that every county (except Hamilton) shall have at least one member in the assembly. As the house ratio by population is 53,782 this requirement makes havoc with popular representation. Seven districts fall below the half ratio and twenty-five are between one-half and the full ratio. In addition to these single-member districts, two of the larger districts have a representative each too many. The over-representation of these forty-three districts necessitates as usual the under-representation of the largest districts. Kings county, which by population should have twenty-five, has twenty-three; and New York county should add nine to its allotment of thirty-five members.

North Carolina modifies equal representation in the house by defining in constitution the ratio, and by the requirement that each county must have at least one representative. Of the ninety-seven counties forty fall below the population ratio and nine of these below the half ratio. This gain for the counties of smaller population is made up by corresponding losses to the counties of larger population. Fourteen counties should have an extra member each, above the number assigned by the apportionment of 1901.

Ohio also has the familiar requirement that each county shall have at least one member in the house (amendment 1903), and also fixes a ratio in the constitution which complicates the apportionment. There is, however, no maximum fixed by constitution for

[4]Apportionment of May 14, 1906, based on state census of 1905.

the membership of the house, and in consequence, while there is over-representation for the counties of small population, there is no under-representation for the larger counties. By the apportionment of 1905 there are one hundred twenty-one members, and the five counties that contain a population each over 100,000 have their proportionate share, namely, thirty-two members. Of the remaining eighty-three counties sixty-one are below the ratio, and ten of these below the half ratio. By population these eighty-three counties are entitled to just eighty-three members, but in fact have eighty-nine, as the six largest of them are assigned two each.

Pennsylvania by constitution provides that its fifty senators be assigned in proportion to population, but with the proviso that no city or county shall have more than one-sixth. This limits Philadelphia to eight members, though by population entitled to ten.

For the house a ratio is fixed by constitution and provision made that each county have at least one member. The constitution sets no maximum to the membership and this by last apportionment was fixed at two hundred and seven. If the population ratio were used, the thirteen large counties including the city of Philadelphia, would have one hundred twenty members instead of one hundred sixteen, four counties losing one each. Of the remaining fifty-four counties sixteen are below the ratio, and five of these below the half ratio. These five by population should have two members only instead of five.

South Carolina requires that each county have but one member in the senate. Of the forty counties twenty-five fall below the ratio, and one below the half ratio. The fifteen counties containing each a population over the ratio should have twenty-one members, and hence lose six to the smaller counties. By constitution each county also must have at least one in the house, but all the counties have populations above the house ratio.

Texas has a small senate of thirty-one members, and provides by constitution that no single county may have more than one member. In fact, however, no county has a population in excess of the ratio and there is therefore no real limitation.

Utah has a requirement that each county have at least one in the house. Of its twenty-seven county-districts fifteen are below the ratio and seven of these below the halt ratio. The more

populous districts must therefore lose their proper proportion. Five districts lose one each, and one (Salt Lake) has ten, though entitled by population to thirteen.

Virginia has no constitutional restriction on representation but in its new constitution (1902) accepts the statutory apportionment of April 2, 1902, permits a reapportionment in 1906, and orders one in 1912 and every tenth year thereafter. An examination of the apportionment of 1902 shows it to be substantially in accord with population. The senate of forty is rightly apportioned; in the house of one hundred members five large districts are short one each, to make up for a slight over-apportionment to districts below a full ratio. No district however falls below one-half ratio.

West Virginia fixes in its constitution the method of computing the house apportionment and grants each county one delegate. The last apportionment is on the basis of population; for of the fifty counties none fall below the half ratio, though twelve are between the half and the full ratio.

Wyoming requires by constitution that each county shall have at least one in each house. In the apportionment of 1901 this results in the gain to the counties of small population of one in the senate (twenty-three members), and three in the house (fifty members), and the consequent loss of these to the more thickly settled counties.

III. In six of the states the restrictions placed on popular representation are especially severe. These will now be considered in turn.

Delaware.—The apportionment to the three counties of Delaware is fixed by constitution and no provision made for alteration. In the senate, Newcastle, Sussex, and Kent counties are assigned seven, five, five members, but are by population entitled to ten, four, and three members respectively. In the house they are assigned fifteen, ten, and ten, but should have twenty-one, eight, and six respectively. In Newcastle county the City of Wilmington is assigned two and five members in the houses, but should have seven and fourteen members by population. This injustice in apportionment will grow worse rather than better, owing to the rigidity of the constitutional provisions.

Georgia fixes in constitution its forty-four senatorial districts, but allows a readjustment after each federal census. In the appor-

tionment of 1904 there are four districts which by population should have nine members instead of four. This is necessitated by the fact that twenty-seven districts fall below the ratio and two of these even below the half ratio.

As for the house of one hundred seventy-five members[5] the constitution divides the one hundred thirty-seven counties[6] into three classes, and orders an assignment of three members each to the six largest counties; two each to the twenty-six counties next in size; and one each to the one hundred thirteen remaining. Had the apportionment of 1904 been in proportion to population, the six largest counties would have had twenty-five members instead of eighteen; the twenty-six counties have their proper assignment; but of the counties in the third class three should have had two each, fourteen fall below even the one-half ratio, and forty-three others range between the half and the full ratio.

Kansas provides that each county shall have at least one in the house, provided it has at least two hundred fifty voters. As its population ratio for the house is 11,764, the smaller districts have too great a representation. In fact there are twenty-eight districts having less than one-half the ratio; these properly should have six members instead of twenty-eight. Hence by necessity the larger districts have too few representatives. The nineteen large districts, to which twenty-eight members are assigned, are really entitled to fifty-one. This well illustrates the evil of inserting an apparently simple condition without proper consideration of consequences.

Maryland in its constitution, as amended, provides that each county shall have in the senate one member, and Baltimore city four, making a total of twenty-seven members, since there are twenty-three counties and the city district. This is far from being in accord with population, as nineteen of the twenty-three counties are below ratio, and ten of these even below the half ratio. In consequence the more populous districts suffer; Baltimore county should have two, and the city is entitled to twelve,

The same objection lies against the apportionment of the house of one hundred and one members. A ratio is carefully defined in the constitution which discriminates in favor of the smaller districts and fixes a maximum for the city of Baltimore. The effect

[5]Since raised to 183 by amendment.
[6]Now 145.

of this is that twenty-two counties which should have fifty members have seventy-one, the county of Baltimore has six but should have eight, and the city of Baltimore has twenty-four but should have been assigned by population forty-three members.

Missouri by constitution provides that its senate be apportioned among districts equal in population and reapportionment made after each federal census.

In the case of the house however each county must have at least one, and a ratio is defined which discriminates in favor of the counties of small population. Of the one hundred fifteen counties seventy-six fall below a ratio based on population, and of these twelve are below the half ratio. The gain in representation to these must be made up of course by a corresponding loss to the counties of larger population. Six of these, to which by the apportionment of 1901 sixteen members were assigned, should have had by population twenty-five, and the city of St. Louis, to which sixteen were assigned, should have had twenty-six members.

New Jersey by constitution makes up its senate by one delegate from each of twenty-one counties. This of course produces great inequality. Fifteen of the counties are below the ratio and eight of these below the half ratio. This necessitates under-representation in the other counties. Essex and Hudson counties should have by population four members each in the senate and Passaic county two.

The constitution also provides that each county have at least one in the house, but as one county only (Cape May) falls below the one-half ratio, the requirement involves no real limitation on popular representation.

IV. The fourth set of constitutions consists of those of the New England states, omitting that of Massachusetts, which by constitution provides for a reapportionment after each state census, on the basis of voting population, and without qualifications or restrictions. As these five states emphasize on the whole the town as the basis of representation rather than the county, their system of representation will be presented from both standpoints, first, from the county basis for the sake of comparison, and then from the town system of representation.

Connecticut by constitution divides the membership of thirty-five in the senate among the counties in proportion to population,

with the proviso that each county have at least one. The assignment in 1906 is sufficiently accurate. Each of the eight counties has a population sufficient to entitle it to at least one; Litchfield county has three but properly should have two; its gain is the loss of Hartford county, which has seven and is entitled to eight.

The house is composed of two hundred fifty-five members and assignment is made on the town basis. If, however, the representation by counties be considered, five[7] counties, to which one hundred thirty-nine members are assigned, should properly have but seventy-three, and three [8]counties, assigned one hundred sixteen members, should have by population one hundred eighty-two.

Maine by constitution provides that its senate of thirty-one members be apportioned among the counties in proportion to census population. The apportionment in 1906 is in strict accord with this provision.

The constitution also provides for a division of the one hundred fifty-one members of the house among the towns on the basis of census population, but adds a discriminating ratio. This will be explained more fully later; but so far as the house apportionment by counties is concerned, it is exactly based on population.

New Hampshire.—The constitution of this state is unique in providing that the senate of twenty-four members be apportioned one each to twenty-four districts, equal in respect to the proportion of direct taxes paid by the said districts. If the districts as set in 1905 be considered as the counties, and their population ascertained, the result shows that eleven fall below the ratio, though none below one-half the ratio. By population the twelve smaller districts should have nine members instead of twelve, and the twelve larger districts should have fifteen.

The house ratio is fixed by constitution and is on a town basis. Disregarding this for the present, and considering the ten counties of the state from the standpoint of census population, it may be seen that four of these should lose fourteen members and these should be added to three of the remaining counties. The greatest difference is found in the over-representation of Grafton county by eight members, and the under-representation of Hillsboro county by nine members.

Rhode Island by constitution apportions its thirty-eight senators

[7]New London, Windham, Litchfield, Middlesex, Tolland.
[8]Hartford, New Haven, Fairfield.

one to each town or city. By county[9] population this means that the four counties of smaller population have thirteen senators in excess of their proportion, and that Providence county, the only other county, loses that same number from its proportion.

Constitutional provisions in regard to the house require that each town shall have at least one, and no city more than one-sixth of the whole number (72). From the standpoint of county population the four smaller counties should lose twelve members, and Providence county should gain them.

Vermont requires that its senate of thirty members be apportioned among the counties in proportion to census population, but that each county must have at least one. The county of Grand Isle has less than one-half the ratio, and the member assigned to this county is lost by Franklin county, which has two members instead of three.

Representation in the house of two hundred forty-six members is by towns and will be presented later. If the population of the fourteen counties however be considered, it may be seen that nine of these have twenty-eight members assigned in excess of their population, and this number taken from four of the large counties.

THE NEW ENGLAND STATES.

Of these six states *Massachusetts* only apportions the membership of both houses on the basis of population. The representation in the lower house is assigned to the counties, and then reapportioned among the towns in proportion to their respective voting population. *Maine* follows the same procedure but specifies a ratio which gives the rural towns an advantage over urban centers. Seven counties only contain such urban centers, and these, eleven in number, are assigned thirty members, though by population entitled to thirty-nine. These nine members are gained by the rural towns in the same counties. Portland, the largest city in the state, is naturally the heaviest loser, having seven members though entitled to eleven.

New Hampshire apportions the membership of the lower house directly to the towns, on the basis of population, but by a set ratio which discriminates somewhat in favor of the county towns. The one-member districts, each composed of one or more towns, number one hundred sixty-eight but by population should have but one

[9]The county in Rhode Island is merely a judical district and has no adminstrative unity.

hundred forty-six members. This gain of twenty-two is lost by the forty-one towns or cities having more than one member each. Unitedly they have two hundred twenty-three but should have two hundred forty-five. Manchester, the largest city, shows the ratio of loss. It has forty-nine members but by population is entitled to fifty-four.

The other three New England states are by no means so equitable in their representation. In theory they seek to make one house popular in basis, and the other representative of the towns irrespective of population.

Vermont, for example, assigns the membership of the senate to the counties on the basis of population, but makes up its lower house of two hundred forty-six members by one delegate from each town or city in the state. Seventy-five of these towns have a population each lower than one-half the ratio, and, if properly represented, would have but twenty-three members. There are one hundred thirty-seven towns having each a population between one-half and one and a half ratios. These have twenty-three members in excess of their population. There are thirty-four towns and cities having each a population over one and a half ratios, to which should be assigned on a population basis one hundred nine members. The four largest cities combined should by population have thirty-three members instead of four. Contrast with these the four smallest towns, which have a combined population of two hundred sixty persons; these are presumably fully represented by their four delegates in the house!

Connecticut likewise assigns its membership in the senate on the basis of population, and divides the two hundred fifty-five members of the house among the towns or cities, assigning one or two members to each. There are eighty-one single-member districts, and eighty-seven having two members each. This difference in representation is historic, and not based on population. Of these one hundred sixty-eight districts, seventy-seven are towns having each a population less than one-half the ratio. They have one hundred members but should have by population twenty. Twenty-three of the seventy-seven towns are two-member districts, and in place of forty-six members should have by population seven members. There are fifty-seven towns each having a population between a half ratio and a ratio and a half. These have eighty-

seven members, though by population entitled to forty-seven. Thirty of these districts have two members each; their representation by population should be twenty-five. The thirty-four largest towns or cities are all double-member districts and hence have a combined representation of sixty-eight members. By population they are entitled to one hundred eighty-eight members. The injustice of this may easily be seen by noting the extremes. The four smallest towns have a combined population of 1,567, less than one half ratio, yet have five members. The four largest cities have a combined population of 309,982 and should have eighty-seven members, instead of the eight assigned by constitution.

Rhode Island uses its house as the apparently popular body, and makes up its senate by one member from each town or city. The constitution however requires that each town must have at least one member in the house of seventy-two members, and that no city shall have more than one-sixth of the total membership. There are thirty-eight towns and cities in the state, and seventeen of these have each a population less than one-half the house ratio. Instead of seventeen members these towns properly should have four. Twelve towns have each a population between a half ratio and a ratio and a half. Fourteen members are assigned to these (1906), instead of eleven, their proper representation by population. There are four large towns and five cities to which properly fifty-seven members should be allotted, but, owing to the limitations already mentioned, forty-one members only are assigned. This loss really all falls on the city of Providence, which by constitution is limited to twelve members though its population entitles it to thirty.

If the census of 1905 were used, the three classes of towns and cities above specified would be as follows:—Nineteen towns having nineteen members, should have five; eleven towns having fourteen members should have eleven; and three towns and five cities have thirty-nine members but should have fifty-six. Providence as before should have thirty members instead of twelve.

The *Senate* is made up of a member from each of the thirty-eight towns and cities. Twenty-five of these fall below the half ratio and should have by population five members only. Seven towns have populations between the half ratio and a ratio and a half, and should have six instead of seven members. The six

remaining districts of large population should have twenty-seven senators in place of the six allotted by constitution. If the census of 1905 were used the classification would be exactly the same.

Using the census of 1905, the five cities and two towns having each a population over 15,000, unitedly have a population of 361,040, or seventy-five per cent of the whole. They should have fifty-four of the seventy-two house members and twenty-nine of the thirty-eight senators. In fact they have thirty-seven members in the house, a bare majority, and seven in the senate, or eighteen per cent of the whole. By contrast the seven smallest towns have a combined population of 7,224, or one and one-half per cent of the whole, and yet are represented by seven members in each house. The city of Providence which by constitution is restricted to one member in the senate and twelve in the house, should by population have sixteen in the senate and thirty in the house.

By taking into account the towns of smallest population, the majority in each house is theoretically controlled by eight per cent of the population in the senate and thirty per cent in the house. If both houses met in joint session for the purpose of electing a federal senator, twenty-eight small towns, containing less than sixteen per cent of the population of the state, could cast a majority vote for their candidate.

Such a system of misrepresentation as this, and those of Connecticut and Vermont, cannot be justified by any theory of democracy, and are entirely at variance with the great American principle of popular sovereignty. These three, and the six states of class III, are, however, glaring exceptions to the general rule. The other thirty-six states are practically democratic in their representation, and the new State of Oklahoma will unquestionably adopt the same policy.

CHAPTER XII.

Constitutions of the New England States.

It becomes obvious that in a comparative study of state constitutions, the set in force in New England should be studied separately, because of the numerous peculiarities found in these ancient constitutions. The latest of these has served two generations, and the oldest was written in the midst of the Revolution.[1] Though amended from time to time, they have been amended conservatively and still retain many features long since outgrown by the other states; with all their amendments they rank as the shortest of our state constitutions, averaging about eight thousand words, or one-half the length of other state constitutions.

Four of these place amendments after the main text and thereby compel a most perplexing tangle of cross-references and obsolete provisions. New Hampshire incorporates its amendments into the constitution, and Maine did so in 1875, but adds later amendments as supplements. Four different methods are used to designate the numbering of articles and sections. Three of the constitutions include a short preamble, New Hampshire and Vermont omit it entirely, but Massachusetts has one long enough (two hundred and sixty-three words) to atone for their shortcomings. Five of the states preface their constitutions with a Declaration of Rights, varying from twenty-one to thirty sections each, but New Hampshire calls it a Bill of Rights, and lengthens it to thirty-eight sections. The religious features of these provisions present marked peculiarities but they have already been presented in Chapter X. All of the states emphasize vigorously the town as the basis of administration and government, and pay relatively small attention to the county or the city. The county in Rhode

[1]Massachusetts, 1780, revised through convention in 1820, and eighteen sets of amendments added since that time up to 1894, thirty-six articles in all. New Hampshire, 1784, revised in 1792, and amended 1851, 1876, 1889, 1903. Vermont, 1793, and twenty-six articles of amendment added through board of censors and convention, 1828, 1836, 1850, 1870, and two additional articles added 1883 through legislative action and referendum. Connecticut, 1818, and thirty-three amendments added up to 1906. Maine, 1819, up to 1875 twenty-one amendments were added and in that year were incorporated into the main text. Nine amendments have been added since that date. Rhode Island, 1842, and nine sets of amendments, twelve in all, dating from 1854 to 1903.

Island is a mere judicial district, but it plays an increasingly important part in the other five states. This system of administrative districts is in marked contrast to that of the other states in the Union, where the county and city receive special attention, and where the town exists, if at all, in the form of a township.

The six constitutions formally separate the three departments of government but the separation is not made in fact. In each state the legislature is given the mass of power and largely controls administration. In Maine the governor must be a native-born citizen of the United States. Four of the states elect lieutenant-governors. In Vermont and Connecticut he presides over the senate; in Rhode Island only in the absence of the governor, who by constitution has that privilege; in Massachusetts he presides over the council in the absence of the governor. The senate elects its own presiding officer in Massachusetts, Maine and New Hampshire. Three states use the old-fashioned executive council, reducing thereby the governor's powers proportionately. New Hampshire has a council of five, and Massachusetts of eight, elected from districts; Maine has a council of seven chosen by joint ballot of the legislature. The council as a rule shares with the governor his power in nomination, appointment, and pardon; in New Hampshire and Massachusetts it shares also his control over expenditure through approval or disapproval of disbursements from the treasury. Connecticut, Rhode Island and Vermont provide for the popular election of three of their heads of administration; Massachusetts elects four, Maine and New Hampshire vest the appointing power in the assembly. In Massachusetts the treasurer may not hold office for a longer period than five years; in Maine, six years. The term of executive and administrative officers is two years except in Rhode Island and Massachusetts, where elections are annual. In New Hampshire, a majority, not a plurality, vote is required in the election of governor, councillors, and senators. This ancient requirement has disappeared from the other New England constitutions. The chief power vested in the governor is that of veto, aside from slight supervisory powers, and the usual powers in nomination, appointment, pardon, and war;[2] Rhode Island alone refuses the veto power to its governor. Four

[2]The quaint and bombastic phraseology of the New Hampshire and Massachusetts war paragraphs is especially noteworthy.

of the states allow their governors five days for consideration of bills, but Connecticut makes it three. The veto may be overridden by a majority of each house in Connecticut and Vermont, but a two-thirds vote is needed in the other three states. If the bill is in the governor's hands when the legislature adjourns, the bill is thereby defeated in four of the states, but is considered as passed in Maine unless returned during the first three days of the next session. No one of the five constitutions allows him to veto items of appropriation bills, though thirty of the other states give their governors this power.

The legislature[3] is elected and meets biennially except in Rhode Island and Massachusetts which have annual elections and sessions. All the sessions begin in January, except in Vermont, where the first Wednesday in October is set. Vermont and Maine hold their state elections in September but the others in November. There are no constitutional limitations on the length of the session in any of the states, but Rhode Island provides that there shall be payment for sixty days service only, at the rate of five dollars per day. Connecticut and New Hampshire fix on a definite compensation for the term, and the other three states fix the amount by statute.[4] The apportionment of the membership of the several legislatures has already been explained in Chapter XI. The substance of this is that Massachusetts fairly apportions representation in both houses on the basis of population; Maine and New Hampshire practically do so, but make some discrimination against urban centers in favor of rural communities. Vermont and Connecticut fairly apportion the senate on the basis of population, but in the house grossly discriminate in favor of rural towns; and Rhode Island discriminates against urban centers in both houses and most unjustly so in the case of the senate, whose apportionment is the least popular in basis of all houses in the United States.

The most noticeable feature of the New England legislatures is the slight restriction placed on their enormous powers. Aside from the veto there are almost no regulations of procedure, and

[3]In Connecticut, Rhode Island and Vermont, this body is the general assembly; in Maine, the legislature; and in New Hampshire and Massachusetts the general court. Massachusetts calls itself a Commonwealth, not a State.

[4]Connecticut, three hundred dollars; New Hampshire, two hundred dollars, and forty-five dollars as a maximum for a special session; Maine, one hundred and fifty dollars for the term; Massachusetts, seven hundred and fifty dollars, and Vermont, three dollars per day.

barely any restriction on special, local, or private legislation;[5] there are a few restrictions on their finance powers,[6] and some general regulation of education and of the militia. Little or nothing is said in regard to such important matters as administrative organization and regulation, local and municipal government,[7] and economic and corporate interests generally. Maine's prohibition amendment of 1884 is the only prominent regulation of social interests. Naturally this absence of restriction and regulation gives to the legislatures unusually large discretionary powers in all forms of legislation.

Suffrage qualifications likewise present some peculiar features and variations. In all the states voters must be citizens of the United States. In Maine a residence in the state of three months only is required; in New Hampshire he must be an inhabitant of a town; Rhode Island requires a two years' residence, except in the case of owners of real estate, for whom one year is sufficient. The other three states make the requirement one year. Four of the states have an educational requirement; in Connecticut the voter must be able to read English; in Massachusetts, Maine, and New Hampshire, he must be able to read English and write his name. Rhode Island has a requirement of a tax paid on property assessed at a value of at least one hundred and thirty-four dollars,[8] for suffrage in the election of members of city councils, or taxing referenda of towns or cities. The chief restriction on suffrage naturally is in those three states that by discrimination against urban centers thereby virtually throw the political control of the states into the hands of an easily manipulated rural oligarchy.

The judicial provisions of these six constitutions also present curious features. In general it may be said that the legislatures have, unlike those of other states, very large powers in defining the organization and powers of the several grades of courts. In Massachusetts, Maine and New Hampshire, the higher judges are appointed

[5]Maine requires the legislature to provide by general law, as far as practicable, for all matters usually appertaining to special or private legislation.

[6]Rhode Island and Maine fix a maximum for state debt; in the former state a referendum may authorize a special debt. Revenue bills may arise in either house in Connecticut and Rhode Island, but in the house of representatives in the other four states. New Hampshire by late amendment (1903) authorized a franchise and an inheritance tax.

[7]Massachusetts has a unique provision that all by-laws made by municipalities shall be subject at all times to be annulled by the General Court.

[8]The old forty shilling franchise.

by governor and council, in Vermont and Rhode Island by the assembly, and in Connecticut by the assembly on nomination of the governor. The tenure of the judges of the supreme court is two years in Vermont, seven years in Maine, eight years in Connecticut, and during good behavior in the other three states. A seventy-year age limit is fixed in Vermont and New Hampshire. In Rhode Island, on request of the governor or either house, the supreme court must give opinions on important questions of law. In Massachusetts and New Hampshire, in addition to the two houses, the governor and council, and in Maine the governor or council, have the same privilege, and the phrase "and on solemn occasions" is added to the conditions under which advice may be demanded. Among minor judicial officers it may be noted that Rhode Island alone of all the states in the Union elects its sheriffs through the assembly instead of by popular vote. The other New England constitutions expressly require that they be elected by the people.

The amending articles of New England constitutions contain several marked peculiarities. Vermont, Connecticut, Rhode Island, and Massachusetts, make no mention whatsoever of the constitutional convention, and must convoke it, if at all, under general legislative powers inherent in their state sovereignty. New Hampshire uses a convention for purposes of amendment, the power of amendment not being vested in the legislature. By constitution the several towns of the state every seven years must vote on the question whether or not a convention shall be called. If an affirmative vote is cast the membership is made up on the basis of the general court, and the results of the labors of this convention must be submitted as separate amendments to referendum vote and must be approved by a majority of two-thirds. These restrictions are so severe that few amendments have been or can be made to the constitution. Maine authorizes its legislature to convoke, without a referendum, a convention by a two-thirds vote of each house, but this power, given by amendment in 1875, has not yet been exercised. Amendments may be initiated by the legislature through a two-thirds vote of each house, and when submitted to referendum vote, must be approved by a majority of those voting thereon. In 1875 the legislature authorized the governor to appoint a commission of ten persons to report to the

legislature such amendments as seemed necessary. Nine of the seventeen amendments submitted by this commission were approved by the legislature, referred to the people, and adopted. This is one of the few instances of the use of a constituent commission.

The legislature of Rhode Island in 1897 tried the commission plan by authorizing the governor to appoint a body of fifteen persons to report to the legislature a revision of the constitution. The commission was seriously handicapped by the knowledge that its work must satisfy the demands of two successive legislatures. It succeeded in this but failed to satisfy the people, who voted down the revision in November, 1898. This result was far from satisfactory to the party in power, which had the revision repassed with a few verbal changes and submitted to referendum in June, 1899. It was again rejected by a larger adverse vote and thus ended the second of the two New England experiments of revision through commissions.

Omitting New Hampshire and Maine, the four remaining states amend through the action of two assemblies but with curious differences. In Vermont, at the end of every decade, dating from 1880, the senate (which represents population) by a two-thirds vote may submit amendments to the house (which represents the towns); if this approves by a majority vote,the amendments are referred to the next assembly, a majority vote of each house must then approve; this is followed by a referendum, and amendments must be approved by a majority of those voting thereon. Massachusetts allows amendments at any time but requires a majority of the senate and two-thirds of the house of the initiating general court, and a similar majority of each house of the next general court, followed by a referendum vote, in which a majority of those voting thereon, approves. Rhode Island requires the action of two assemblies, a majority of each house approving and a referendum; but requires approval by popular vote to be by a three-fifths vote. Connecticut initiates amendments by a majority vote of the house only;[9] these are referred to the next Assembly, and must be approved by a two-thirds vote of each house, and then on referendum by a majority vote of the electors. Connecticut, under the stress of urgent

[9]This body represents the towns, not the population.

demands for constitutional reform through a convention, called such a body in 1901 under the general legislative power vested in its assembly. The dominant political interests of the state, however, placed certain limitations on the convention's power of revision, and made assurance doubly sure by making up the membership of the convention by one delegate from each town, irrespective of population. The result was a revision unsatisfactory to all parties concerned, and its consequent rejection in 1902 by referendum vote. The house in 1905 submitted a revised constitution as an amendment. This made no material change, merely incorporating the amendments into the body of the constitution, and increasing the pay of assemblymen from three hundred to five hundred dollars. This revision must be acted on by the assembly of 1907, and then submitted to referendum vote.

These amending articles largely explain the reason why New England constitutions are old-fashioned. The legislative systems of Massachusetts and Maine are popular in basis and allow a fair expression of public opinion. A retention of old-fashioned features in these constitutions, therefore, implies a conservative policy and an unwillingness at present to initiate any important changes. It would certainly be a public boon, however, if the general court of Massachusetts would authorize the secretary of state to omit from the constitution its obsolete provisions, and to place amendments each under its proper article. New Hampshire though popularly organized in its legislature is restricted in amendment by its seven year requirement, its unwieldy convention of four hundred and fifteen members, and its preposterous requirement of a referendum majority of two-thirds. Rhode Island, Vermont, and Connecticut are not organized on a popular basis, amendments must meet the approval of a rural oligarchy, pass an ordeal of two assemblies, and in Rhode Island must have a majority on referendum of three-fifths. Under such conditions urban enterprise in these three states is suppressed, corruption in politics is encouraged, and broad progressive policies for economic and social development rendered impossible.

The question might well be raised in these and a few other states of the Union whether one generation has a right to bind future generations by such serious restrictions on the process of amendment. Certainly no irrepealable provision would have any

binding force on posterity, nor should an amending article be considered as legally binding that practically nullifies democratic principles and hinders economic and political progress. Sufficient precedent and theory could readily be formulated to justify a legislature which should disregard such stringent restrictions, and provide for a system of amendment more in accordance with a government founded on popular consent.

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